United States Court of Appeals

for the Second Circuit

APPENDIX

74-1290

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs-Appellants,

vs.

LEE NATIONAL CORPORATION,

Defendant-Appellee.

APPENDIX

(Volume II—pages 406A to 817A)

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SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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AFTERNOON SESSION

2:15 p.m.

ROBERT GARBER, resumed.

DIRECT EXAMINATION (CONTINUED)

BY MR. TAYLOR:

Q At the intermission, Mr. Garber, we were discussing the subject of contract extensions and you had stated that you had received what was called a memorandum of understanding dated June 21 from Mr. Heinrich, and again you have gotten another letter dated June 25, and you were showing us, at the intermission, your copies of those particular documents.

June 21, 1963, the proposal which you said was withdrawn that night.

A Yes, I know what we're speaking of.

THE COURT: I assume the proposal that was made and withdrawn would be no more acceptable to the union than the second proposal which was made and rejected for the reasons you gave?

THE WITNESS: Well, we've been in the process of discussing the June 21st proposal.

THE COURT: But there was no difference between them, was there?

THE WITNESS: A slight difference, yes.

hsg2 Garber-direct

THE COURT: Would they be material?

THE WITNESS: Not in substance, really. But we never gave them a chance, really, on the 21st.

We were exploring it with them.

THE COURT: I understand that.

THE WITNESS: And they withdrew that before we gave them an answer.

THE COURT: I understand that. But I assume the answer would have been the same as the answer to the ultimate ones, if there was no difference between the two --

THE WITNESS: The answer may have been the same to the extent that we would not have wanted to enter into a written agreement, but we were desirous and we were not adverse to working on a day-to-day basis under the basic conditions they had spelled out.

THE COURT: That was still true of the second one?

THE WITNESS: Yes.

Q Would you just take a look at this photostat that was made of the copy that you had.

A Yes.

Q Does it seem substantially the same?

A Yes.

Q These are the two documents that you received yourself from the company on June 21st and June 25, 1963,

containing their proposals on contract extensions; is that correct?

A Yes, that's correct.

MR. TAYLOR: I would like to mark these for identification, your Honor. I will offer counsel copies.

MR. MOSS: The one for June 25th is already Exhibit 92-A, I believe.

MR. TAYLOR: I do not think so.

MR. MOSS: You'd better check.

MR. TAYLOR: You are right. If it is 92-A --

THE COURT: 92-A is a proposal of June 25, 1963.

MR. TAYLOR: That should be it, your Honor, then. It is in evidence, 92-A.

Then, your Honor, I will only offer the previous proposal dated June 21, 1963. I ask to have that marked.

THE COURT: That is the one after June 7th, right?

MR. TAYLOR: The June 7th is a proposal, your Honor, on all the common factors. This is a memorandum of understanding on the extension of the contract.

THE COURT: The one that was not signed?

MR. TAYLOR: The one that was not signed was withdrawn ~~drawn~~ right away and followed up by 92-A.

The document for identification at the moment,

your Honor, is June 21st.

THE COURT: The witness says he received this from the company?

MR. TAYLOR: Yes.

Q Mr. Garber, the memorandum of June 21st you received from the company; you testified to that before?

A That is correct.

Q At a meeting on June 21st?

A That is correct.

THE COURT: Whose handwriting is on this?

THE WITNESS: That is mine, sir.

THE COURT: Your handwriting?

THE WITNESS: Yes, all of it.

THE COURT: Have you any objection, Mr. Moss?

MR. MOSS: No, sir.

THE COURT: Received.

(Plaintiffs' Exhibit 103-A received in evidence.)

xxxx

2/ THE COURT: I see the third from the last paragraph on this first page is the understatement of a generation.

MR. TAYLOR: Of which paragraph? Which document, your Honor?

THE COURT: 103-A.

MR. TAYLOR: 103-A?

Q Mr. Garber, I believe you testified before the intermission that you had had several discussions or a lot of discussions were going on at this time concerning the extension of the contract proposals for both sides. Can you tell us a little bit about that aspect of the situation existing in this period of time with reference to these documents and the proposals made?

A I'm not sure if I understand you.

Q We had had some testimony that there had been contrary proposals made for extending the contract, and in fact at the meeting on July 3rd you had quite a discussion, I believe, with management -- I believe it is June 29th, pardon me -- that would be document 99-A in front of you to refresh your recollection -- no, my apologies -- 100-A, the meeting of June 28th -- and on page 2, to refresh your recollection, you had had some discussion concerning contrary approaches to contract extension.

I was trying to elicit your comments with regard to the subject. What was happening then?

A Well, we, as a union, took the position with the company that rather than spending our time discussing contract extensions, we should be devoting our time trying to resolve the various issues before us. And we wanted to

get into the various contract issues, but it seems all we were doing each time we met was talking about contract extension. We said it seemed to us to be a waste of time, it's not going to resolve anything.

Do you want to go into the various issues we discussed?

Q Yes. Well, specifically, I would like you to address yourself to the economic issues, which is the subject of the negotiations going on at that time. From the time you came in, from the position you stated on June 19th, would you bring us forward, the position of the union and the position of the company here?

A Well, basically, the company's position right along had been for a 25% wage cut. We told them that we didn't see any justification to it -- for it, and that even with the wage cut the magnitude that they talked about, it wouldn't satisfy their needs as we saw it. In fact, even if we worked for nothing, probably they'd still be operating in the red.

So that their problem was not in the wage field, their problem was in ~~their~~ other areas, as I referred to someplace there, was in areas other than the wages.

We wanted to do what we could do to keep the jobs there and the plant open, but we told them we

weren't going to be a party to certain outsiders coming in and taking over our plant and operating the plant in such a manner as to cause a loss, and have us contribute to their making the profits by buying up stock during this entire period of time.

That was the basic type of discussion on the economics.

We discussed Strong-~~Narovich~~ Narovee, we discussed the products, the production per pound. We tried to understand the company's position. We were convinced that it wasn't a true position. They were not telling us the whole story.

We did make several counter-proposals, for example, on the 25% wage cut.

Q Could you elucidate on the union's counter-proposals?

A Yes.

Q Did you submit a formal set of counter-proposals at any time?

A Yes, we did, on several occasions.

Q Where was the first time?

A The first one was somewhere in the first week of July. I'd say -- I believe it was July 3rd.

Q Do you have any form of notes concerning it,

what was offered?

A Yes, I do.

Q Could you tell us from your notes or from your memory, the essence of the union's position then?

A Well, the first proposal we gave them addressed itself strictly to the wage issue, the economic issues, and we gave them a proposition which said that if you guys are serious, and if you are sincere, we will agree to work under the present contract for a year, and if at the end of that year -- they told us that their cost of producing a pound of rubber was 15.2 cents per pound -- we said we will try that for a year, and if at the end of the year their labor -- their conversion costs were more than 15.2 per pound at that time, we would agree to take a wage cut equivalent to the excess of the conversion cost above 15.2 cents per pound.

In other words, if it went to 16 cents per pound conversion costs, we would take a wage cut which would be equivalent to the 8/10 of a cent per pound increase in cost.

On the other side of the coin, we said if we can, by mutual cooperation, reduce the conversion costs below 15.2 cents per pound, we want to have 75% of that savings paid to us and 25% of the company.

Now, I agree that may have been a bargaining point. We may have thought we'd ~~stand~~ end up with a 50-50 deal, but we did give a proposition of 75% of the savings of the reduction of cost of the conversion below 15.2.

Q Is this what has been referred to as the productivity sharing proposal? We have had testimony on this before.

A This would be a counter-proposal to that, in essence.

Q Yes.

A But it would also address itself to what they considered to be the primary item between us and the negotiations; that is, the 25% wage reduction request. And we figured this is one way out.

At that same time, don't forget, we would be thereby foregoing our demands for wage increase which in the industry at that time was 9 cents the first year and 7 cents the next year.

That pattern had already been set.

So we would be foregoing that and working at the existing wages, and we would be giving them a proposition whereby if the cost went up, we would take a wage cut corresponding to the increase. If it went down, we would have some way of recovering some of that savings that was

brought about by the reduction in the conversion cost per pound.

But at the same time, we told them that isn't -- we didn't think that was the big problem.

Because, as we saw it and from the discussions we had across the table, a company, if they want to, can maneuver the labor cost up or down practically at will within certain limitations, of course.

1/3

For example, and these are the discussions we had with them, if they had all their tire builders doing work other than tire building, they had them mowing the lawn or doing whatever, they could make the cost of a pound of rubber conversion skyrocket, because there's nobody working on converting, working and doing something else.

By the same token, I think even the Strong-Narovich report, which they had made reference to and we were discussing, would indicate that there's a direct parallel and direct relationship between the demands of the company for production and the conversion costs. And if you take that report you will find that where they had two and a half million pounds of rubber produced in a month, their conversion costs were low. If it went to 2 million-2 pounds per month, the conversion cost went up. If it dropped to a million-2 or a million-3, their conversion cost would shoot up like

a skyrocket.

These are the things over which the union absolutely had no control. It did not mean that the union members were not working as hard as they did before, or applying themselves to their jobs. It meant only that the utilization of labor was not being utilized properly. The time was not being utilized.

In the entire plant you have hundreds of different types of machinery, conveyor belts, work stations. Once you put a person on that and he has work to do on a tire or a piece of a tire, as that product comes to him he has to be there and he has to be paid whether he works on 20 tires an hour or a hundred tires an hour, or only one tire an hour. He has to be there. Something has to be done in the production process at that given point. He has to be paid.

So, correspondingly, if the company puts the production demands and makes it high enough, the conversion costs will automatically decrease.

2/1

In fact, I argued with Mr. Heinrich and the other company representatives that in effect between February and March of 1963, and in April of 1963, which the last report we had, they had in fact received the equivalent of an 8 cent per pound reduction in conversion costs by merely increasing the amount of production. They increased it from one million one pounds to one million three. That 200,000 pounds increase in production alone, with no other changes in the wage rates, fringe benefits or anything else, effectively reduced wage costs by 8 cents per pound conversion costs.

So our argument was if they went out and applied themselves in getting the sales, or whatever they wanted to do, so that the plant could produce somewhere nearer to the capacity of the plant, the conversion cost problem would eliminate itself. I think the Strong-Narovich report indicates that clearly and simply.

Q What was the company's reaction to the counter proposal?

A The counter proposal was rejected. Point blank, just that -- "We reject it." I think July 3rd that was. Mr. Heinrich said "In order to make it official, your counter proposal has been rejected by the company."

Q Was that at or about the time you were discussing the counter proposal, July 3rd?

A Yes. You will find that in the minutes. And there was no explanation, just "We reject the proposal."

Q What was the company's next move with regard to the offers or proposals, or did they just adhere to their previous proposals?

A They stuck to their 25 per cent wage reduction proposal.

Q Did the union try anything else to be flexible in the way of offers after that?

A Yes. About a week later, on July 12, we gave them a proposition which we thought would totally settle the contract.

Q On July 12?

A Yes.

Q Can you tell us something about that, please?

A Well, yes, I can. I think the first item we addressed ourselves to in that proposal -- and we gave it to them as a total proposal to settle the entire contract -- the first item dealt with their pension contributions. There were various ways you can fund a pension. You can fund it on a 30, 40 or 45 basis

or terminal. We offered to go to the kind offunding which would mean the least contributions per year on the part of the company and still provide the pensions for those people who retired. I think the costs I had somewhere would indicate that proposal alone would save them several hundred thousand dollars per year. I think the cost of terminal funding, which we offered, was slightly over a hundred thousand dollars, whereas the minimum funding they had been going by was some $370,000 per year.

We offered also on the recall rights to go to three years and cut it off after three years, and we further offered that at any time that the company wanted to they could approach any one of those members on layoff within that three year period and work out any kind of a solution or a settlement with the individual member that they wanted to.

In other words, if the guy's special distribution payment, or separation payment under the SUB plan, might amount to $4000, if they wanted to negotiate with him he might be willing to accept $500 as a complete settlement, and we agreed to let them do that on any individual member, and we would accept.

We also addressed ourselves to the question of the :

the direct wage reduction. We said we would take a 5 per cent wage reduction but that we would want that guaranteed or backed up in the form of taking 5 per cent of the wages in the form of company stock. We took the position that if we had enough faith in the company to put 5 per cent of our wages in the stock they should be willing to go that way, too. In other words, we would have a 5 per cent direct reductionin wages, but we would get the equivalent of that in company stock. That was another counter proposal made to them.

This was all one proposal.

Q Yes, sir.

A We offered to -- and I believe it was at the same time and part of the sameproposal -- we offered to go to key classification in the tire building only, and not to the other classifications that they wanted. They had four or five other classifications they wanted as key classifications.

One of the reasons we didn't feel it was necessary to go to key classifications in other than the tire building was because we had asked the company to provide us with the names of the employees who were in fact on those key classifications at the time, and they did that, and we found most of those had enough seniority

that they wouldn't have to worry about being laid off unless the plant really went down to the bare minimum.

Based on that information, we made the proposition that the key classification would be in the tire building.

Also, on the question of the reduction of the guarantees, we had under the old contract 100 per cent of the past average earnings as a ~~grant~~ guarantee for off standard conditions, and the company was asking for 90 per cent. We as part of our proposition offered to go to 95 per cent.

Those covered the basic economic items, and we addressed ourselves to them because the company's theme throughout the negotiations had been that unless they could get some relief on it -- on their ten major items -- that they saw no need, no benefit, to talk about the other so-called minor issues.

As part of this same proposition we did talk about changing the termination date. I believe it was August 1st -- the first proposal we had given them was a July 1 termination date, 1964, and the one we gave them around the 12th was a termination date of August 1, which we got nearer to the date that they were asking.

Q Nearer the date that they had asked?

A Nearer to the date that they had asked for.

Q They wanted a new working agreement, if any, to terminate about when, do you remember?

A Yes. I believe they wanted it to coincide with ~~thier~~ their changed fiscal year. I believe it was September 30.

Q That would be September 30, 1964?

A Yes.

Q I see.

A I think both parties knew at the time, as the judge has indicated, both parties said "If we get down and the sole question was the termination date, it was not going to stand between us."

We all recognized that. We said that across the table "If that is the only ~~issuer~~ issue we're not going to have a strike over that."

Q I assume the union also brought forth its productivity sharing proposal.

MR. MOSS: I don't know why Mr. Taylor should be assuming any of those things. He can ask the witness.

THE COURT: I didn't understandwhat he said so it wasn't prejudicial.

Q On the issues of wages which you discussed concrening your counter proposal on July 3, was the proposal that you made on wages, plus the sharing of productivity, also part of this proposal made on July 12?

A No, it was not. They had rejected our proposal of July 12 that above the 15.2 cents per pound conversion cost would be one thing and below would be another. They rejected that. We substituted for that the 5 per cent reduction in return for company stock in lieu of that.

Q So there was no productivity sharing offer made by the union, and no other wage cut, other than the 5 per cent taken as stock, as you mentioned, is that correct?

A That's correct, as I recall it.

Q You mentioned that unless the company was going to get the plant down to the bare, bare minimum. I would just like to know what you meant by that?

A I meant only that these people seemed to have enough seniority to have reasonable expectation that they could continue on ~~their~~ their own jobs in those classifications the company was requesting to be made into key classifications. They had quite a bit of seniority.

Q When you say bare minimum, do you mean the total

number of employees in the plant?

A Yes.

Q Do you have any figure at which you consider bare minimum?

THE COURT: If the plant was going to operate at all, these employees would be safe, is that what you mean?

THE WITNESS: Reasonably safe, yes.

Q May we step back a moment to the company's proposals of June 7, 1963. The first document you had received on June 19 we had it numbered as 98A.

Would you please tell us your evaluation of the company's position in these three areas, taking them one at a time, please: The job evaluation incentive program, management rights clause, and the key classification proposals.

Be kind enough to take the job evaluation and the incentive proposals first.

THE COURT: I take it you are not asking his present evaluation, because that would be immaterial. You are asking what he told the company at that time?

MR. TAYLOR: His and the union's position on this at that time, yes.

MR. MOSS: At what time?

MR. TAYLOR: June 19, 1963, when he received them.

A The job evaluation program is in their proposal on page 15,and the reason theunion couldn't accept at that time was because of the major and glaring deficiencies apparent in their write up, deficiencies which we told the company about. Under their proposal as of that time the company wanted the unilateral right to go out and hire somebody, an industrial engineer, to go out and take a look at all of their jobs then in existence, whether or not they had changed from previous standards or not, and revise all existing rates.

Their proposal also contained a provision which said that even if the union disagreed with what this industrial engineer come up with the only thing that the company would do under those circumstances was to furnish the union with data on which the industrial engineer based his findings. But that was the extent to the union's right of redress. They couldn't grieve on it, and they couldn't take it to arbitration.

In other words, this was a request of the company to have the free ~~reign~~ rein to go out and hire somebody to come in and cut any rates or change any rates without the union having any kind of redress whatsoever.

The thing went further. Their proposals also said even after this was done that the company would have the further right to go out and make further unilateral changes without the right of the union to grieve over it.

To do that, as the union saw it, and as I saw it at that time, would have meant the union might as well have folded up their tents and gone home because we would have had no say as far as wage rates, rates of pay, who was being paid what or who was doing what. None of this was subject to arbitration, and these are things we told the company "We are sure you are not serious, or else you don't know what you have written when you made a proposal like that."

Insofar as the -- what was the other thing you said, key classifications?

Q Before you get to that point, with respect to the job evaluation and time study, what's the usual practice with regard to evaluating a job?

THE COURT: We have had all that from the other witness. Don't repeat.

Q Pass that.

THE WITNESS: May I say this, your Honor. The right of reevaluating a job is not unusual in labor

contracts, but it's usually restricted to new jobs or changed jobs. Here they want to go out and reevaluate all existing jobs whether changed or not, which even the mediator told the company, this is completely unusual, the usual thing is not for existing jobs but new jobs or changed jobs.

Q If such evaluation were to be made it would usually be on a joint basis?

A Yes, as it had been on a number of occasions, or at least the union would have the right to send in their own time study engineer and make his own individual evaluation and checks, and, also, it would be subject to grievance procedure ad arbitration in case of dispute. Their proposition wouldn't allow the union time study engineer to enter the plant. He would have no way of knowing what speed rating the industrial engineer rated the individual, was he working 80 per cent, 100 per cent, or 150 per cent, to arrive at these conclusions. We had no way of knowing that.

Q In other words, the crucial element is on the job experience, observing the people at work, and without it you would have no guides as to the premise upon which the conclusion was built, is that correct?

A That is absolutely correct. You wouldn't

know if the guy was working at a three mile per hour pace, four mile per hour pace, or somewhere in between, if you just had the raw data.

Q With regard to the management rights clause as contained in this proposal -- here again there is the situation where management was asking for things completely unacceptable, contrary to anything in the industry, and a situation in effect where it was asking the union to resign, and I will point out the specifics why I say that as soon as I can find it.

They wanted to write -- I can't find it now.

Q Take your time.

A It's on page 35. They wanted the right to subcontract the manufacture of any of its products or any portion thereof.

Q What do you mean "subcontract"?

A That means if they wanted to set up a shop down the street and have somebody make treads or other parts they could and the union would have no right to protest in spite of the fact jobs were being taken out of the plant. There is usually a subcontracting clause contained in the contracts but it usually addresses itself to the right of subcontracting maintenance work. This management's rights clause would give them the right

to take any portion of the manufacturing process out, set it up on a shop down the street or any other place, and the union would have no right to grieve.

That is just one.

Q Mr. Garber, as an extension of that, assuming this proposal went through, could the ~~union~~ Company actually remove virtually all the tire manufacturing parts of the production process to another plant, to other plants?

A It could.

Q They could subcontract --

A All or any part.

Q So they could virtually remove the plant fromunder the union contract, is that correct?

A Yes, that is what it says. That is their proposal.

Q Was there any other element you wanted to bring up?

A The whole thing is replete with things where they had the unilateral rights to do certain things which in other contracts would be subject to grievance procedure or arbitration. Usually themanagement rights clause says the company has the right to operate its business, conduct the working force, as long as any of these things don't conflict with the terms and provisions

of the agreement. Here it says the management would have the right to transfer, promote or demote employees, to lay off, terminate, or otherwise relieve employees from duty for lack of work or other legitimate reasons, including termination of any employee who has been on layoff for a period of at least six months if in the opinion of management there would be no further need for any one or more of such laid off employees in connection with the plans of management for the foreseeable future.

MR.MOSS: Where is the witness reading from?

THE COURT: Page 35 of 98A.

Q Is that essentially it?

A Yes. That is about all I have to say on that.

Q Now, key classification, please?

A We recognized certain arguments of the company in connection with key classification, but we pointed out to them that we had already agreed to the key classifications for tire building insofar as layoff provisions were concerned.

Q What do you mean you had already agreed to key classification for time builders?

A Before I got there the union and the company agreed five or six months beforehand to put tire builders in a special category where they couldn't be bumped with other employees faced with layoff even with more seniority.

Q That was an agreement currently in force when you arrived?

A Yes.

Q I see.

A It was in force and effect and had been used. I asked the ~~employee~~ employer to provide me with a list of laid-off employees, which they did, and I had also asked them to give me a list, as I indicated before, of the employees on these other key classifications, and their seniority dates, to see whether or not it was in fact necessary, and they provided us with that information, also.

Q I show you a list dated July 11, 1963, with the heading on the first page being a list of names of 44 names being under tire builders.

THE COURT: Do you have to go into so much detail?

MR. TAYLOR: Yes, your Honor. We are going to make specific reference to these particular documents

for a particular purpose. Limited, but necessary.

Q And a list entitled "Laid off union female employees," and another list entitled "Laid off union male employees."

I ask the witness, Mr. Garber, are you familiar with those documents?

A Yes, I am.

Q Are those in fact the documents handed to you by management about which you just testified?

A At my request, yes.

MR. TAYLOR: Your Honor, we offer these.

THE COURT: What is their relevance?

MR. TAYLOR: The relevance, your Honor, is with regard to what has been heretofore testified or referred to as the superseniority agreement in tire building room, which is now known as a key classification, and the dispute of the company whether such contract was in existence and particularly with further reference to document 91A being the letter of, I believe it is May 1, or thereabouts, from Mr. Barkett to Mr. Hess, about which there was a great deal of controversy and dispute regarding recall rights of previously laid off employees, youwill recall there has been some ambiguity concerning the right whether there was in existence at this time an

agreement giving superseniority rights or key classification rights to the tire building room, and this can be directly proven, your Honor, or at least supported very strenuously by reference to the company prepared lists of such employees in the tire building classification, and by reference over to the seniority status and lay off date of all the particular people involved, which will go along way to proving that there was such an agreement in existence not later than February 15, 1963.

THE COURT: Does the company dispute that?

MR. TAYLOR: They have heretofore never seen any such agreement. We don't know its date. Mr. Hess testified there was one and claimed he was there by virtue of it, but -- and because the compar. nor union don't seem to have a document which there may well have been.

THE COURT: For that limited purpose you can put it in.

MR. TAYLOR: We will call this the key classification list dated July 11, 1963, and this will be marked 104A.

(Plaintiff's Exhibit 104A was received in evidence)

MR. TAYLOR: The undated set of papers

entitled "Laid off union male employees" will be 105A.

(Plaintiff's Exhibit 105A was received in evidence)

THE COURT: What is 104A?

MR. TAYLOR: The key classification list, your Honor, for the different jobs starting tire builders, which has a date of July 11, 1963.

And the list, undated, entitled "Laid off union female employees," 106A.

THE COURT: These lists prove what?

Let me see the letter where he asks super-seniority status for laid off employees.

MR. TAYLOR: That is 91A, your Honor.

THE COURT: Right.

It seems to me you are making a lot of fuss about nothing.

MR. TAYLOR: There was a great deal of controversy about it.

THE COURT: This witness testified there had been a key classification for the tire builders.

THE WITNESS: And there were tire builders in the classification stillworking who otherwise would have been laid off at that date.

THE COURT: This letter here asks for

something entirely different. It asks for the key classification on recalls.

MR. TAYLOR: If I recall correctly, when your Honor came to some dispute withMr. Hess in his testimony concerning the meaning and the nature and the intent of that letter, I believe he stated on his last day of examination, or on the second time around on this document, that it had to do with recall rights, and there was some dispute remaining as to whether or not there was in fact and in existence an agreement between the union and the company ~~concerning supersenority~~ as it was then called for ~~fire~~ hire builders.

THE COURT: This witness says there was. Mr. Moss says he doesn't know one way or another. I don't see how the documents tend to prove it. It seems to me this letter assumed there was such an agreement.

MR. TAYLOR: If your Honor will observe with me for a moment, I think we can do something about that, particularly since these were documents prepared by the company in the ordinary course.

MR. MOSS: If you trouble about this for your own sake, your Honor, that is one thing. I don't mind these documents at all. I have never seen them before. They might prove helpful to me.

THE COURT: Since -it will make everybody happy I will let them in. It's very rare you get an opportunity to make such a ruling.

(Plaintiff's Exhibit 106A was received in evidence)

MR. MOSS: I would like some explanation of the numbers. I understand the documents, what do the T's mean, and what are the notes, and who put them on there?

THE COURT: There are nonotes on my document.

MR. MOSS: On Exhibit 106A I have some checkmarks, and on 105A on the last page there are a series of T's, and there are checkmarks on page 8.

THE COURT: The other plant was in Youngstown, was it?

MR. TAYLOR: Yes.

THE COURT: Did you have anything to do with the Youngstown dispute?

THE WITNESS: No, that was Local 102.

MR. MOSS: Your Honor, Mr. Heinrich says he -has never seen 104A, doesn't know anything about it. I don't understand from Mr. Garber, I haven't understood the testimony yet,is it his testimony that he got

104A from Mr. Heinrich?

THE COURT: What is that, the key classification list?

MR. TAYLOR: Yes.

THE COURT: I haven't seen that.

Q The question, Mr. Garber, is: Did you receive that document from Mr. Heinrich?

A I got this on July 11 from Mr.Conway. Mr. Conway gave it to me on July 11.

My notes don't show any reference to it. I didn't make a ~~list~~ list of those present, but I don't see any conversation involving him during the course of the meeting on the 11th. But this is at a negotiation meeting, and was in response to our request.

THE COURT: In response to your request?

THE WITNESS: Yes.

THE COURT: You are talking about 104A?

THE WITNESS: Yes, sir.

THE COURT: Could I see it?

MR. TAYLOR: Yes, you are about to, your Honor.

THE WITNESS: And I have the same thing in my handwritten notes from that same date.

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MR. TAYLOR: If I may continue, your Honor -- I have to stand up here in order to show you and the others because we only have the one copy, your Honor -- on the first name on the list, the document 105-A, the laid-off union male employees list, is the name of P. Delessandro.

Now, it shows that he was hired on June 7, 1945; and if your Honor will observe, his date of lay-off is June 28, 1963.

Now, he is the last laid-off person, the most recent laid-off person as of the date -- we have not got dates for this list, but it was handed --

Q What was the date you said you received this list? Did you receive this on --

A It was about the same time we asked the list for the -- is that the list of key classifications and their seniority dates, or the lay-off list?

Q Did you receive this on June 28th or thereabouts?

A It was after that.

Q It was after that. Do you know how long after that?

A It was about the same time we got the other list. This 106-A.

Q Right. But neither of them are dated?

A The other list of the key classifications.

Q That is July 11th?

A It was about the same time as that.

Q About the same time, I see.

MR. TAYLOR: If your Honor will observe, running down the list of male employees, the laid off male employees, it is obvious that everyone below the name of Delessandro is a rating of junior seniority.

THE COURT: What do you mean by that?

MR. TAYLOR: In other words, if you follow the hiring date, that is his seniority status. So that everyone below the name Delessandro was laid off before him. He is the most senior member of the union in this laid off employees list and he is laid off as of June 28, 1963, together with two others just below him.

If you will observe that, your Honor, this entire list is in descending order of seniority. So that the last name of the list was obviously the most junior man in the plant; therefore, the first one to go on this particular list.

If you will notice that that name on page 11 is a fellow named, C. Trifiletti, and his seniority date would be March 26, 1962.

Now, if your Honor will refer to document 104-A in conjunction here, in order to match up the lay-off date of

June 28, 1963, your Honor would have to turn to page 2.

My apologies. Forgive me, your Honor. I do not mean page 2, I mean your Honor would have to go down to the seniority status of June 7, 1945, which was Delessandro's seniority status.

Your Honor is looking at the key classification list for the tire building room which was dated July 11, 1963. That would ostensibly be all the tire builders engaged by the company at that time.

Since the last person on this listlaid off on June 28, 1963, had a seniority status date, seniority date of June 7, 1945, your Honor would come down, I believe, to the name next most senior to June 7, 1945, would have to be the name following Floyd Miller or Wosczyna, number 28, if your Honor will observe.

So that on that tire building list, all the names below Wosczyna, or number 28 to number 44, were junior in seniority to Mr. Delessandro, who was obviously laid off and they were not.

THE COURT: I see.

MR. TAYLOR: Conversely, your Honor, one more point. If your Honor now looks at the very last name, the most junior name on that list, Mason, number 44, your Honor will observe that his seniority date is January 14, 1946.

And now if your Honor turns back to 105-A, to find out where that coincides, you will come to the name of E. Ronnan on page 2 of 105-A, this male employees seniority list, and you will see the seniority date is January 7, 1946, which means on the laid-off list, which is the most recent in time going forward, everybody above the name of E. Ronnan was laid off in preference to Mason, the lowest man in the tire building room.

THE COURT: That indicates to you that they had key status?

MR. TAYLOR: Yes.

THE COURT: I was going to hear testimony on that.

MR. TAYLOR: The particular idea on that is, if you now look at E. Ronnan's name, and you see the date of his lay-off, the date of his lay-off is February 15, 1963. So that for sure it seems there was some form of agreement, protecting tire ~~agreement~~ builders, at least by February 15, 1963, since none of them were laid off after that date.

We have established at least that date as an outside date. And the witness has testified that there was an agreement in existence five months prior to the expiration of the collective bargaining agreement,

approximately five months before the expiration of the collective bargaining agreement, concerning what has heretofore been known as the senior status for tire builders.

THE COURT: Let us call it one thing from now on.

MR. TAYLOR: We will call it key classification for tire builders.

THE COURT: Because key classification means something different.

MR. TAYLOR: That is the point I was going to make.

Q Would you agree with that, Mr. Garber?

A Yes.

MR. TAYLOR: I am taking back 104-A because I want to make copies to show the other side.

Q Mr. Garber, I may have interrupted your testimony to introduce those documents since you had just mentioned it.

You were discussing -- perhaps you had finished; please tell us -- that last point about the June 7, 1963, proposals concerning key classifications.

I am not sure that you had finished your remarks.

A I think I had finished.

Q Okay. To the best of your knowledge, Mr. Garber,

did the company make any material changes in these proposals from the date when you first discussed it to the date when you left Conshohocken?

A The most dramatic change they made was to increase the six months' recall rights to 12 months. On those major items. There were a few other minor items in the contract which didn't really deal to the gut of the issue or the heart of the issue where the parties did make some concessions to each other and reach some kind of a tentative agreement on a lot of non-economic matters and things of that type.

THE COURT: They made some changes on the question of plant evaluation or work evaluation?

I recollect there was a proposal where there would be an arbitration of sorts.

THE WITNESS: Oh, yes. There was another proposal they had made on that in connection with their June 3 proposal to Mr. Clairmont. But that was in connection with our accepting the 25% wage cut.

THE COURT: But that is a change.

THE WITNESS: It was a change in the -- yes, from the June 14th proposal where in June 14th they would have had the unilateral right, and on the later one they would have been jointly selected, but still without

arbitration.

THE COURT: That is right, but it was a change.

THE WITNESS: Yes.

Q Mr. Garber, you have stated that you received and discussed with the company a report known as the Strong-Narovich report?

A Yes.

Q Did you analyze that document on behalf of the union?

A Yes, I did.

Q Did you discuss that document in some detail with the company?

A Yes, I did.

Q Could you start, please, by referring to the report itself and could you give us its essential analysis?

THE COURT: I have read the report.

MR. TAYLOR: Your Honor, it is an economic document. This man is qualified to do just that job. And I believe in a relatively short time he can give us the essentials which are going to further be discussed with regard to the financial statements of the company.

THE COURT: With emphasis on the relative shortness.

THE WITNESS: The Strong-Narovich report

emphasized basically that the big problem was in the sales. It was a concurrent problem insofar as the cost of production, but it ended up by saying even if there was a reduction in the cost of producing a pound of rubber, it would only temper the loss, it would not overcome it. The big problem was in the sales area, short version.

Q Were there some statistics provided with the Strong-Narovich report?

A Yes, and those statistics on the last page merely reinforce the conclusion which I just stated.

For example --

Q Excuse me; bear with me a moment. I think his Honor might want to see a copy of that.

A You can take any number of figures out of here and arrive at the same conclusion.

For example, the conversion cost in the month of March on the last page, 1963, was 39.14 cents.

Q That is the item on the fifth column down?

A It's line 5 under the column March, 1963.

Q It is designated .3914 or 39.14 cents; is that it?

A Yes. It's dollars, or if you want to make it cents, it is 39.14.

That was based on the 1,069,000 pounds, and with

its same wage rate, same as fringe benefits, relatively the same number of employees.

In April the pounds of rubber went up to one million three and a half, one million three hundred fifty thousand, and merely on the basis of the increase in the pounds produced, the conversion cost dramatically dropped 8 cents.

THE COURT: He has already said this. Why do you have him repeat it?

MR. TAYLOR: All right, your Honor.

THE COURT: I am not the world's great economist. But I can understand him the first time I hear him.

THE WITNESS: If I may make this additional statement, your Honor, this one thing: That eight cents a pound reduction on a 1,350,000 pounds production represented approximately $95,000 savings in conversion costs, but their loss was only reduced by 20,000.

In other words, they had 242,000 loss in March and even with a $91,000 reduction in conversion costs, their losses only dropped to 221, which shows again reinforcing the items of Strong-Narevich, that the labor costs are not the primary factor, it is other things that has to be -- because the 91,000 in savings is

converted to 21,000 in actual savings, or actual reduction of loss.

Q In conjunction with your discussions with the company concerning the Strong-~~Narovich~~ Narovec report, did the company also give you any other supporting data prepared by the company?

A Yes. I had asked for additional information and they had given us some.

Q Was there anything that you deemed important in this pertinent to the Strong-Narovich report as far as your analysis is concerned?

A Not that would have any difference, really, then what we have just arrived at here.

That would support it, but it would not show you the difference.

Q I ask you if you have seen this report before? Not the report, but statistics.

A Yes, these are reports that were received by us from the company dated March 11, 1963.

Q Do you have a copy that you received?

A Yes.

THE COURT: What the witness has just said does not add anything to the Strong-~~Narovich~~ Narovec report.

MR. TAYLOR: There is this one other item on it,

your Honor, that is relevant.

Q Yes, and you have it?

A Yes.

Q This report --

A This was not in connection with the Strong-Narovich report, this was beforehand. This report was prepared by the company on March 4th.

Q Yes. But it was prepared by the company and handed to you by someone from the company. Do you remember who gave it to you?

A No, I do not.

Q We are looking at this particular report. They seem to give comparative figures for January 1962, measured against January 1963?

A That's correct.

Q And three months in 1962 and three months in 1963. That would end in March, do I take it?

MR. TAYLOR: I will specifically show him what I am talking about.

A Yes, I --

Q Mr. Garber --

A For the year, three months' fiscal year.

Q -- the statistics involved there in total pounds of rubber produced and the labor cost per pound bear out

your conclusions concerning the Strong-Narovich report, I take it?

A That's correct.

Q There is a column prepared here concerning --

MR. MOSS: Your Honor, I have never seen these papers. I do not know what he is using them for.

THE COURT: I hope you never will. If it just bears out what is already in, why go on?

Someday we will have to end this trial.

MR. TAYLOR: It's purpose is to support the contentions of Mr. Hess on a number of employees at the time in question.

THE COURT: Why not come to what you are talking about.

MR. TAYLOR: I am sorry, your Honor. I would like to introduce it from that point, your Honor.

THE COURT: Call his attention to what you want to say; show it to Mr. Moss and then find out what you want.

Q In the column under non-employees, would you tell us what the columns for January 1962 and January 1963 are, for the number of employees?

A Average number of employees for the three months, the first three months in '62, were 897 employees. For the first three months in 1963, the average number of

employees was 586.

Q That is in the bargaining unit the employees we are talking about?

A Hourly employees.

Q Right. And for the three months in 1963 and the three months in 1962, what were those comparative figures?

A That's what I just gave you.

Q Forgive me.

A 897 for the first three months' '62; 586 for the first three months' '63.

Q I did mean the January 1962 and 1963 figures.

A According to these figures, 899, January '62, the average number of hourly employees; and in January '63, average number of hourly employees is 473.

Q And the parenthesis below 47.4% in parenthesis means a decrease from that period?

A Percentage change, yes.

MR. TAYLOR: Your Honor, there has been some discussion and dispute as to how many employees were engaged in this company both on lay-off and on active employment as of the date of the work stoppage in July 1963, and I offer this document in evidence to support the contentions of Mr. Hess that there were 825 employees

when Mr. Clairmont took over, approximately that many, in approximately September 1962; and that there were 261 employees actively engaged at the time of the work stoppage on July 16, 1963, with some 470 employees, I believe, approximately, on lay-off, on active lay-off.

THE COURT: How does this show what happened on any of the dates concerned?

MR. TAYLOR: It may not conclusively approve the exact numbers, but it tends to corroborate for sure that there were more nearly the amount of employees on the roles of the company, as Mr. Hess testified to, than we might otherwise be led to believe.

THE COURT: You had a 34% drop --

MR. TAYLOR: Between the three months of 1962 to the three months of 1963.

THE COURT: And ending in February?

MR. TAYLOR: I am not sure.

Q Mr. Garber, the three months for the year, is that a calendar year?

A No, fiscal year.

Q Oh, what was the fiscal year?

THE COURT: When does this three months end?

THE WITNESS: In January.

THE COURT: What?

THE WITNESS: It would have been January.

THE COURT: So this figure, 586, would be in January of 1963?

MR. MOSS: How does he come to the conclusion that three months FY means January?

THE WITNESS: Because I just looked at the January report, and the January report for -- ended October 31, 1963.

So that would include November, December and January.

THE COURT: What does three months FY mean?

THE WITNESS: Fiscal year.

THE COURT: Fiscal year. So the fiscal year, the 1963 fiscal year, started sometime in 1962?

THE WITNESS: Yes.

MR. TAYLOR: Started November 1, 1962, your Honor.

THE WITNESS: So it would include November, December and January of each corresponding year.

THE COURT: So these figures show November, December and January of 1962 and 1963?

THE WITNESS: That is correct.

THE COURT: And the last figures are just January?

THE WITNESS: That's correct,

THE COURT: Which suggests that it is still going down?

THE WITNESS: Right. Because the average of the three months was 586, and January it was lower than the average for the three months.

THE COURT: Well, unless Mr. Moss has any objection, I would like to amend what they do not seem to me to show, what the situation was in July.

MR. TAYLOR: They do not, your Honor. They only establish a base at that time.

That is all we are entering it for, your Honor.

THE COURT: Any objection to these?

MR. MOSS: No.

THE COURT: Why offer the documents? The figures are in the record.

MR. TAYLOR: Yes, if you would like.

THE WITNESS: If you want to know the approximate number of employees in April, it would work out to about 320 in April, based on man hours worked in the Strong-Narovich report of 173 hours per month.

Q Forgive us, based on the Strong-~~Narovich~~ Narovec report?

A Yes, it shows that the union man hours worked in April 1963 were 50,596 and the 40 hours a week is 173

hours; and based on that, that comes out to about 317 employees.

THE COURT: In April?

THE WITNESS: Yes.

THE COURT: We are talking about 1963?

THE WITNESS: Yes.

3/4 Q From the Strong-~~Narovich~~ Narovec report, and you are referring to the number of man hours in April 1963 there, which would be column 2, 50,596 hours; is that what it says?

A Yes.

Q And you are basing your calculations on a 40-hour per week per man?

A Yes, it would be 173 hours per month, which is standard. That's what everybody uses.

Q So you place 317, approximately, employees?

A And again I'd say on that basis approximately 300, because there might be a few people working more hours and some other production people working less, but that will show you about 300.

Q I see. Thank you.

A In April '63.

Q Now, you had, and certainly the testimony of the documents bear out, a good deal of discussion concerning

Strong-~~Narovich~~ Narovec. What was the position of the company here?

A They needed a 25% wage cut and they couldn't do anything, couldn't go out and get the sales unless they had the ~~sales~~ wage cut.

Q You pointed out to them --

MR. MOSS: Couldn't Mr. Garber tell what he pointed out to them rather than Mr. Taylor?

MR. TAYLOR: Withdrawn.

Q What did you point out to the company concerning the Strong-Narovich report?

A The same thing I've been saying right along, the question as we saw it was not in the cost per man hour, that was not going to solve the question regardless of whether you took a wage cut or not.

In the first place, the wage cut in ~~the south~~ itself, as indicated by the March and April figures, that I indicated, would not give them the relief; and number 2, if they expected employees who took a 25% wage cut to go out and try to increase the production, they would probably be a little bit mistaken in that because that would be contrary to the human principles.

If an individual took a 25% wage cut, he wouldn't feel strongly about going out and exerting himself. So we tried in every way we could to convince them that that wasn't

the right answer, and we thought that their own documents proved that it wasn't the right answer.

Q Turning from that, Mr. Garber, to document 13-A, a letter addressed to Mr. Hess, dated June 28, 1963, which is in evidence, would you see if you are familiar with that?

A Yes.

Q That letter contained the --

A I got a copy of this in the mail.

Q You did. All right. Do you have it in front of you?

A I have it here someplace.

THE COURT: You got a copy at the time?

THE WITNESS: Yes.

Q That copy contained the recently revised proposals of the company as of the date June 28, 1963, did it not?

A Yes.

Q And you have already testified concerning your opinion on those, on the revisions?

A Yes.

Q So that I direct your attention to paragraph 4 of that letter and, for the benefit of the Court, I will state it:

"We have further pointed out that a certain prominent tire manufacturer recently received" --

THE COURT: The Dunlop case?

MR. TAYLOR: Yes.

Q Mr. Garber, this paragraph refers to a wage cut given into by another local of the United Rubber Workers somewhere around this time to Dunlop Tire Manufacturing Company. Were you involved in that situation?

A I was aware of it. I was not directly involved in it, no.

Q Did you have information concerning the Dunlop situation?

A Yes.

Q Are you conversant with the situation?

A Yes.

Q Could you tell us about it, please?

A Well --

Q Specifically, what was the wage cut there?

A The company in Dunlop, Local 135, had been sustaining a loss for a number of years, and in 1961 the union insisted that the Dunlop Corporation follow the so-called Tire Package Settlements and went on strike to force them to do so, and the company did accept and did agree to the industry patterns in '61.

In '62, the company came to the union and said that fellows were having a problem here. We've got to do something. Our losses are continuing. They're getting greater, and we'd like to have your cooperation.

And they had enough faith and trust and confidence in each other that they can talk sensibly about a key item such as that.

They did some bargaining on it.

During the term of the contract, the contract hadn't expired, during the middle of the contract, and they ended up that the company finally asked for, and the union finally agreed to, a pre-determined dollar amount of wage reductions.

They accomplished that not by really reducing wages, but they went through and jointly tightened up those incentive rates which were lose, loosened up those that were tight, and those that were average they left alone.

So the net result was a 9.2% reduction, but with the opportunity for the employees to put forth enough effort so that they could in fact maintain their own wage level that they had before.

Of course, that would mean more production for less money with the company. And it was also a $500,000 figure, and if the wage reductions after a period of time

would prove out to be more than that, the company agreed in writing to put the excess back into the package for the future and divide it among the employees.

And it also agreed at the time that they would reach the future pattern in the tire industry, whatever it was.

Q That would be the big 4 package, essentially?

A Yes.

THE COURT: What time in the future?

THE WITNESS: The next time around.

Q When was the next time around as of then, do you know?

A That would have been in 1963.

Q Which was approximately how far away from the date of that agreement?

A In approximately a year. And they did meet it.

Now, the problem there, they didn't reduce the hourly rates. I think it should be pointed out here that Dunlop, their claim -- and the union apparently bought the thing later on -- their claim was that their wage rates were 10% higher than the average for the tire industry, above and beyond the big 4, and that's why they were having problems.

And our research checked that out, that Dunlop had

gotten themselves in a position where over the years they had increased their wages above and beyond what the big 4 did, and they were above the average.

Their claim was merely to want to get down to what the average of the big 4 was.

Q But rather than an overt wage cut, they went over the base rates and incentive programs by re-evaluating, I take it, the jobs?

A By the company and the union in joint consultation they agreed to revise existing piece work rates, not the hourly rates.

Q What is the difference?

A On piece work, if you get 10 cents per tire or 3 cents per tire or what have you, they may have cut the 10 cents per tire to perhaps 9 and a half cents per tire, and these are not exact. I am just giving an example.

Whore another tire, maybe on white sidewall, both parties thought the rates were adequate and they didn't change that at all.

THE COURT: Well, that is enough for illustration of what you mean. They were the 12 highest of all the tire companies in the United States at the time on that in wage rates.

Q Are you familiar with the work rules that were

posted by the company on July 18, 1963?

A Yes.

Q I will refresh your recollection an d offer you a copy of that.

MR. TAYLOR: Document 44 in evidence, your Honor.

THE COURT: I remember that.

Q Would you tell us what you know concerning the meaning of these work rules?

A Well, the union was notified on the afternoon of July 16th that the company was unilaterally going to put these work rules into effect. I was not at that meeting, I was in Akron, but I got a telephone call from Charlie Hess, and the Company -- he subsequently got a copy of it -- the company told the union they were going to put into effect a 20% wage cut. They were going to put into effect a new job evaluation program, and they were going to unilaterally put into effect key classifications for all the classifications that they had previously talked about.

They had written work rules which said that anybody who laid down on the job or didn't cooperate with the new work rules would be subject to disciplinary action. They wrote that right in.

They changed the off-standard payments from

a hundred per cent to the 90 per cent that they had proposed. They cut out one holiday, the eighthholiday. I'm not sure about that.

They cut out Easter Monday as a holiday.

Q Well, with regard to thejob evaluation program, was this the original proposal by the company or was this their revised proposal as of June 28?

A That was their original proposal.

Q Did you discuss this with the company, the work rules?

A Not prior to the time they went into effect, no. I discussed it with Mr. Conway by telephone on the night of the 16th very briefly, and I told him that I was going to have Mr. Hess call him and see if they could work something out because we didn't want any problems to develop. I did not talk personally face to face with anybody prior to the time that they put these into effect.

Q What was your opinion of those work rules?

A I think the company deliberately did that in order to force the employees to go out on strike.

Q Did you continue in negotiations in Conshohocken thereafter?

A Periodically, yes.

Q Did you have any hope of reopening the plant, coming to an agreementon the working agreement?

A I think the feeling was pretty well complete that thecompany was going to close the plant. I don't think

there was much doubt in anybody's mind about that. In fact, that is one ofthe reasons why I didn't ask the president to call me back. I wasn't assigned back there on a regular basis at all after August 4 or so, which was the last time I was there.

Q Did Mr. Conway indicate to you in any manner that there was any room for negotiations? Did you feel there was any room for negotiations?

A He told me point blank this was the decision made by the so-called executive committee, and it was going to be put into effect, and he didn't have any authority to change it. That was by a telephone call of July 16.

THE COURT: That was the day the strike started?

THE WITNESS: No, this is the night on which the company informed the union that they were going to put these work rules in effect the day after the next day. These would have been in effect at the beginning of work on the 18th.

Q Mr. Garber, to this moment of time have you ever seen a company adopt a bargaining position on the eve of a strike similar to that in Conshohocken on July 16, 1963?

A I have been involved in negotiations with a large number of companies, some ofwhom had situations which I considered to be more stickier than this one, and in one case the plant had actually been up on the auction block -- that was Mohawk Rubber, in West Helena -- and there was bitter feelings there. The plant had been on strike for 120 days. I had never found a situation where if both parties really wanted to reach agreement they couldn't, and in each of the other cases we did, and we didn't here, and it wasn't because the union didn't want to.

MR. TAYLOR: Thank you, I have no further questions, your Honor.

THE COURT: Mr. Moss, would you like to take ten minutes to organize your thoughts?

MR. MOSS: Yes.

(Recess)

THE COURT: Mr. Moss.

CROSS-EXAMINATION

BY MR.MOSS:

Q Tell me, Mr. Garber, you testified at some length this morning about job evaluation and how it was done on the basis of the time it took a person to walk, I don't know, three miles or something like that, and

mdr4 Garber-cross

although I didn't understand a lot of what you had to say about how it was done, is this something which is done on a relatively scientific basis?

A I think you have it a little mixed up. The three mile and four mile an hour ~~basis~~ base is not really part of the job evaluation concept. The three mile and four mile an hour concept would come into play when you are talking about establishment of a piecework rate or elemental times in the ating procedures.

Q I see. Then straighten me out about job evaluation as against piecework rate fixing, if there is any difference.

A Yes. As I tried to say before, job evaluation addresses itself to the establishment of an hourly rate, the relative worth of any one job as compared to any other job in a given area, a given plant. It's a comparison device.

Q So the people who are doing a harder job or a job which is more complicated or requires more skill are higher paid than people who are doing a less difficult job?

A You are hitting now on component parts of job evaluation. Each of the things you mentioned are given a value -- he is required to perform the job

efficiently, skill, experience, hazards on the job, responsibility of that job or that person performing that job insofar as it relates to possible material spoilage or waste, responsibility of that person for possible damage to equipment, responsibility of thatperson performing that job for the safety of others. All of these various facts and facets as a total are evaluated, so you can't purely say just because a person is doing a harder job or working harder that he for that reason would call for more money than somebody else who is working not quite so hard.

I think a good example is in the skilled trades. They may not work physically as hard as a production worker who is lifting tires and putting them into a boxcar. Physical labor is only one facet of job evaluation. It is described to take the total worth of a job and relate it to the total worth of some other job in a semi-scientific manner.

Q So you can pay the person according to the capacity?

A Yes.

Q And you are to be fair in the end to the person doing each particular job in relation to what's being paid the person doing each other's particular job, is

that right?

A That's right.

Q What is the business about piece rates or incentive rates? Do they come after the basic rate is set, or do they apply to two different sets of jobs and two different sets of payments entirely?

A Two different sets of circumstances. The job evaluation is designed to set an hourly rate, how much should a job be paid on a flat hour for a flat given unit of time.

Q Who works on that rate? Who works on the basis of getting a flat amount for whatever job he is doing. What jobs are paid in the Conshohocken plant a flat hourly rate, for example?

A If you want me to name the jobs I can name them.

Q Not all of them?

A Skilled trades would be one.

Q What is skilled trades? Boiler man?

A Electrician, pipefitters, plumber, millwright. Normally shipping and receiving are on an hourly rate. Even if a job is on piecework it will have an hourly rate equivalent. Q. That is what I wanted to get to. Were there any people in the Conshohocken plant who

worked on hourly rates, they got paid for eight hours work at $3.15 an hour in the union?

A My understanding is that there were.

Q And those were, you say, people in skilled maintenance jobs, and things of that sort, and shipping jobs?

A That is my understanding, sir, yes. There were others, too. But these would be included in the group that would be paid at an hourly rate.

THE COURT: You don't remember now the whole list, do you?

THE WITNESS: No, I don't remember the jobs on an hourly rate and piecework, but normally tire builders and key classifications would be on a piecework.

Q Tell me about how you establish a piecework rate, and what reference it has to an hourly rate. I understood you to say just a moment or so ago that piecework jobs had hourly rates also.

A Most of them do have.

Q Could you explain that?

A Yes. In most plants they are called a base rate. That is usually the most common term used. That base rate would be the hourly rate. That would be

set on the basis of the job evaluation program if they had in fact one. Some places and some jobs and some plants it is established willy-nilly or by tradition without any evaluation process.

Q If you don't mind my interrupting, what do you mean established willy-nilly. You mean ~~established~~ established by management when the plant opens and that is it?

A. They grew like Topsy. Management originally set them and then throughout the course of years in negotiations some jobs were raised and others were not.

THE COURT: Never a scientific survey made?

THE WITNESS: Yes. Many plants operate today on that basis.

Q Is that true of Conshohocken?

A Today?

Q Not today. At the time we are dealing with here. I believe you said that Conshohocken never had a job evaluation?

A That I believe is correct.

Q Every job then, tire building and calendar and curing and so forth had a -- what do you call it, a base rate?

A Yes. An hourly rate.

Q What did that have to do with how much a man

earned?

A If he was on a flat hourly rate and no incentive that is what he got paid for each hour worked.

Q But you said those jobs weren't on flat hourly rates, that they worked on incentive, is that right?

A Some of the jobs, yes.

Q How did you establish an incentive rate based on the rate and what was the significance of the base rate once you fixed an incentive rate?

A I will have to ask you this question: Do you want me to tell you howthey did it in Conshohocken or how it would normally be done?

Q Normally.

A If you had an hourly rate established, then if you wanted to give the employee the opportunity of earning more money in return for producing more by working more efficiently, then you would have to come up and make an elemental study of his job, just what did it consist of, and that means the physical and the time-consuming portions of his job -- how long does it take to walk from that table over here, pick up a piece of rubber, take it back, put it in the machine, perform his function, take it ouf of the machine, pile it on skids

and take it to where it was supposed to be.

Each of the different types of work is broken down and an average time is derived by a series of time studies. So that after you get enough data by a time study engineer or a person skilled in that function he can tell you how long it should take the averaged experienced employee to perform not only the individual elements but the total job.

Q I understand.

A And then you can equate that to what that individual should make if he worked let's say 25 per cent above what he would work at if he is on a flat hourly rate. You can then convert and establish a piecework based upon 100 units of production or 1000 units or whatever method of payment you want to establish.

The payment then would be changed from a flat hourly rate to a per unit basis of payment, so that the more units he made the more money he would make.

Q The less units he makes the less money he makes, or is there a base?

A That depends upon the various contracts, but in most cases there is a base. In almost all cases. Usually it would be the hourly rate to start

with, and over the years it would be negotiated upwards.

Q I don't want to belabor this too much, but am I correct that you are saying that if there isan incentive rate fixed that if someone doesn't make the average that you are expected to make he gets paid the base rate?

Supposing it's understood youcan make 25 tires in an hour, and you have a base rate of $3.25. If you make only 20 tires in the hour, do you get the base rate of $3.25 times the hours you work or do you get less because you didn't even reach the average?

A I asked at the beginning whether or not you are talking about Conshohocken or the normal outsideof Conshohocken. I will try to answer your question as truthfully as I can. An individual who does not put out the production that heis capable of putting out will receive only the pay that he would receive from his production, unless his contract calls for a floor or a guarantee, in which case if his pay by virtue of his units production falls below the floor he will still receive the floor.

Q How long does the management have to keep somebody who consistently doesn't make the rate?

A That again will depend upon what your

union contract says. Most of them will spell out a different trial or a training period depending upon the job. Tire building, for example, will take a longer period of training than it would a forklift truck operator, but in answer to your question further in most contracts if you have a guy who has already reached his level of skill and is capable of doing and deliberately doesn't make it, most of themwill permit management to take disciplinary action against the individual. The union's only recourse is to grieve if they think the disciplinary action is excessive.

Q Once you set an incentive rate, then a person who is particularly good exceeds the base rate and even exceeds the average will receive additional earnings based upon his particularskill?

A Yes.

Q Mr. Vasko testified yesterday, I believe, he was able to do in six hours what it took the ordinary man eight, when he was working. Therefore, he would have been able to have received a higher daily rate?

A If he was being paid on a one for one basis he would have been earning 33-1/3 per cent above what the other guys were making.

THE COURT: This used to be anathema to the

unions.

THE WITNESS: Yes. To a lot of international unions it still is, but it's come into acceptance as long as the safeguards of the unions'time study engineer is also involved so they go out and do some double checking.

Q Tell me, Mr. Garber, going back to Conshohocken, I believe your testimony was there had never been ajob evaluation in Conshohocken?

A That had been the information that was conveyed to me by management and I had no reason to disprove it.

Q That means then nobody had ever done a scientific fixing of the base rates, is that right?

A I believe that to be true, yes.

Q Does it also mean there had never been a scientific fixing of the incentive rates?

A No, not necessarily. I would think that under the old contracts the union had the right to process grievances or file grievances on piecework rates, and I am sure they did. I am sure by virtue of the give and take and discussions at the grievance procedure some fair and equitable settlements were arrived at.

Q That wasn't what I was trying to find out. I was trying to find out if you knew how the piecework

rates in effect in Conshohocken in, let's say, June of 1963, when the contract was up for renegotiation -- do you know how they had been fixed?

A No,I do not. I had read one of the reports of management which said they had never been checked through the war years and post-war years and they just came into being and there was no rhyme or reason for them.

Q What you are saying is as far as you know the piecework rates which were in effect at Conshohocken in the spring of 1963 had been fixed, you don't know how, but that you assume that underthe contract that if the union were not satisfied with them because they were, I take it, too high, that they had been adjusted in some way, right?

A If theunion was dissatisfied theywould have a right to grieve on them, yes.

Q Are you testifying from memory that the contract did so provide at Conshohocken?

A I have the contract here.

Q Did it so provide at that time?

A It's my understanding that it did, yes.

Q Getting back to the job evaluation which the company wanted, what was that -- that term has been

thrown around pretty generally and I wonder if you could tell me what was the job evaluation that the company had in mind, base rates, piecework rates, or both?

A You mean on June 14?

Q Whenever they said that they wanted a job evaluation program, and they sent in their proposals of June 7 or June 14?

A They wanted to reduce all rates by 25 per cent to start with.

Q No, they wanted a wage reduction, which has ~~nothign~~ nothing whatever to do with the job evaluation program, right? You could get a 25 per cent wage reduction or a 10 per cent wage reduction without wanting a job evaluation, couldn't you?

A Yes.

THE COURT: Or vice versa. You could have a job evaluation without a wage reduction.

MR. MOSS: Exactly.

Q So that piece of information had nothing to do with the job evaluation program the company asked for?

A They were tied together, but they could have been separated.

Q They were separate proposals?

A But both of them had to be agreed upon. This is what thecompany told us.

THE COURT: He is just asking about job evaluation.

A Perhaps you should repeat your question. I am not trying to evade. I just don't understand.

Q I am trying to find out if you can tell us, if you know, what was the job evaluation which the company wanted to make?

A They didn't spell out the details. The only thing that they told us in their ~~July~~ June 14 proposal, which is in front of us, is that they wanted the right to go out and hire somebody to make a job evaluation and have the right to adjust the rates in whatever manner that that study showed in ~~the~~ the company's opinion was necessary to make them competitive.

Q You didn't ask them whether they were referring to ~~basic rights~~ base rates or piecework rates or either or both?

A The job evaluation had nothing to do with piecework rates.

Q If job evaluation has nothing to do with piecework rates then why was the union so anxious to insist upon the rights about its right to grieve the

rates and have a time study man, and so forth?

A You had a number of different company proposals. You keep referring to job evaluation.

Q Exactly. That is what I am trying to get straight. You testified at length on job evaluation this morning.

A That's right.

Q You said that the union opposed the company's job evaluation proposal. you said that even when it was revised to provide for some kind of third party person you still opposed it, and I am wanting to find out what job evaluation it is that you are talking about.

A I testified this morning that the company wanted on June 14 to have the right to go out and reevaluate all jobs.

Q Yes.

A All jobs. And the union wouldn't have the right to protest them. And they would have the right, further, once they were set bythe company originally, to go out and further revise them at will at anytime they wanted to, also not subject to union review.

THE COURT: That had nothing to do with piecework it seems to me. He said that ten times.

MR. MOSS: Mr. Vasko wss testifying about the

fact that the thing which was upsetting him,at least, so much was that they weren't going to allow time study people to come in and study the rates, and I understood if,Mr. Garber, that time study people came in for the purpose of setting incentive rates.

THE COURT: I think that is true.

Q Isn't that right?

A Yes, time study men can also be utilized to make the job evaluation study. But it's a different function.

Q So your testimony really is that the job evaluation the company was asking for in your opinion covered both base rates and incentive rates?

THE COURT: No, he said precisely the opposite.

MR. MOSS: Then how can it be --

THE COURT: One of the elements is time, and the time study man would be in to do that part of the evaluation. Isn't that what you said?

Q Is that your testimony you needed the time study man to fix the basic element of fixing the basic rate?

A The time study man also makes job studies on an elemental basis to set piecework rates in addition.

THE COURT: But they are two different

functions.

THE WITNESS: Yes.

THE COURT: The time study man only puts in one of the elements of the job evaluation. He has nothing to do with the education that the guy needs?

THE WITNESS: No, he just evaluates what the job requirements are?

THE COURT: In time, in respect to the use of time?

THE WITNESS: Yes. Whether or not he needs two years experience, six years experience.

THE COURT: The time study man doesn't do that?

THE WITNESS: He can do that.

THECOURT: Can he do that, too?

THE WITNESS: Yes. How long does it take, how much experience does a man have to have in order to be a full scale electrician, is it four years? That is ~~somethign~~ something a time study man, by performing a job evaluation, can tell you. To take other side of the coin, he can take an average guy and maybe in two weeks train him to operate a forklift truck. He would know that that is a job requirement. So in one case you have a job factor of two weeks versus another

one of four years. He will know that, and he can evaluate the hazards of driving a forklift truck versus an electrician working with 440 volts. He can give you the relative value of the hazards.

THE COURT: Then I had a different idea of a time study man. I thought he was just a man who studied the time it takes to move like you described before?

THE WITNESS: That is basically true, your Honor. That is what their primary function is. 90 per cent of the time they do that. But most everybody I know can perform the other funttion of job evaluation, but it's a completely separate function on a different basis.

THE COURT: Myidea of what a time study is is correct, it's just a time study man also does other things?

THE WITNESS: A time study man in performing an elemental study will use a stop watch, or other time measuring device. In job evaluation a stop watch is not used at all.

Q That gets me back to the question I asked in the first place, which was, is the conduct of the job evaluation pretty much a scientific matter which is done by professional job evaluators on well accepted

professional basis?

A Yes.

Q Would it be safe to say one professional job evaluator is essentially just as good as another?

A They have a difference, but they shouldn't be more than 5 per cent apart. If they are, one of them is not going the job properly.

Q The first proposal the company made was that they were going to hire or ~~retain~~ retain a professional job evaluator to do a professional job evaluation at the plant, right?

A No, I think the first one was the company was going to do it themselves.

Q Did the company have time study people and evaluators, job evaluators, on their staff?

A I can only tell you there is nothing in their orignal proposal of June 14 which indicates they were going to go outside, that the company was going to do the job.

Q You did quite a lot of negotiating about the job evaluation matter with the company, did you not?

A Yes.

Q Did you ask them whether they were going to do it by themselves or get somebody from outside?

A Yes. I am sure that I did.

Q Did they say they were going to get somebody outside or do it themselves?

A The question of that type resulted in their coming back and saying we are going to go outside and get an industrial engineer to do the job.

Q So eventually they got to that point?

A Yes.

Q And you knew they weren't going to try to do it all themselves, Mr. Clairmont and Mr. Heinrich weren't going to go out and set the job evaluation?

A That's right.

Q I gather you ~~said~~ said that wouldn't be satisfactory, that you wanted to have some kind of objection or review, right?

A That's correct.

Q Am I not correct that the company eventually made a proposal which included the right of the union to object, and that there would be some joint discussion about the job rates?

A They said they will give us some data on which the industrial engineer made his findings, but they specificallyproposed that ~~this~~ this wouldn't be subject to the grievance procedure and not subject to arbitration. They

did agree to discuss it with us, if that is your question. But they cut it off at that point. They wouldn't agree to let us put a union time study man into the plant to study the job, to observe the job, they wouldn't allow grievance procedure to be used, and they wouldn't allow any grievance to end in arbitration.

Q You say this was discussed at the meetings though it doesn't appear in the minutes?

A I think it appears in the minutes, and it -appears specifically in your proposals. It specifically says it's not subject to arbitration.

Q Does it specifically say you can't have a time study man come in and look?

A No. It does not. But we discussed that.

Q Eventually, the company --

MR. AUERBACH: The witness didn't finish.

Q He did finish, but then he started to add something.

A You are right.

Q Am I not right?

A Yes.

Q Eventually the company made a further offer on job evaluation, did it not, that if after looking at the data which the professional engineer had made up, and

that the union had some objection to it, that not only would the company discuss it but that they would be willing to -- they provided a procedure by which the union and the company would jointly pick through theAmerican Arbitration Association, I believe, from among a group of outstanding professional evaluators who would finally determine the matter in controversy between the union and the company, am I right?

A No, sir, that proposal was never made to us.

THE COURT: I thought I had seen it.

THE WITNESS: I can tell you what the proposal was made. That the company and the union through this procedure, if they couldn't agree on an industrial engineer, would go to the American Arbitration Association to have them pick the industrial engineer.

THE COURT: Pick five industrial engineers, out of which you would pick one?

THE WITNESS: Yes, but never as a final review. This was to pick the industrial engineer.

THE COURT: That's right, and he would make the review.

THE WITNESS: Yes, and his findings wouldn't be subject to challenge.

Q By the ~~union~~ Company, or by you; is that right?

A I am not sure of that.

Q I show you what has been marked Exhibit 13-A, which was the letter sent to Mr. Hess with a copy to you, dated June 28, 1963, and ask you if that does not constitute the proposal of the company on that date with respect to job evaluation, or at least part of the proposal with respect to job evaluation?

A Yes.

Q When you say that the company was never willing to let job evaluation be the subject of arbitration, you are meaning by that that the ordinary grievance procedure and the sending of something to arbitration under the grievance procedure of the contract was not to be applicable to the job evaluation?

A That's correct.

Q So at least by June 28th the company had made I would say significant but at least movement toward accommodating the union's objections to their original job evaluation proposal?

A They had changed from their original position, yes.

THE COURT: What's so bad about the position in that proposal that you just said?

THE WITNESS: If you take any proposal in itself

it may not appear to be so bad, but if you say all the other proposals have to be accepted in order for this to go into effect -

THE COURT: I am just zeroing in on this.

THE WITNESS: I would say this to you. If that had been the only issue remaining, and that was as far as we could go, I would reocmmend to the union on that issue alone that shouldn't be the cause of a strike. If that was the only one. It's not as good as I would like , but it's something we could live with.

Q Am I correct in negotiations in general that is practically always the position of the parties, that except with rare exceptions if you took one particular item that is very unlikely ever, if it is the final item left, to be the sticking point in an agreement?

A Different people negotiate in different ways. I know that is one of the tactics used.

Q I don't mean a tactic. Isn't that as a practical matter the usual way it works out?

A It depends on the import of that one issue that is remaining.

Q If the 25 per cent cut was the only remaining issue, that may be the one at which somebody would stick; is that right?

A Right.

Q And as you testified earlier you all had agreed that you couldn't agree on the contract's termination date, but you all had a sort of understanding that if that were the last item that wasn't going to provide an insuperable obstacle; is that right?

A I think that was discussed across the table, that's right.

Q That was true of various other -- of the proposals, of the individual proposals, made by either side; is that right?

A There probably were a few others that fell in that category. I don't think any of the major ones, though.

Q Well, you were always apart on most of the major problems, were you not?

A Yes.

Q What did you consider the major problems?

A Actually, it was the 25 per cent wage cut, but I think that was just a symptom of something else that was going on. I think the major item was that the local union and the International union thought at the time that the company there was really just trying to destroy the union and force them to go on strike for reasons that were not involved in the collective bargaining process.

Q You stated that on direct examination, and we will come to that. That was sort of the peroration of your entire testimony. The fact of the matter is I was asking you what in your view were the biggest items.

A All right. I'd have to place the wage cut at the top of the list. I think that the right of the company to revise piecework rates without being challenged would be at the top of the list.

THE COURT: That is different from this job evaluation we were talking about?

THE WITNESS: Yes.

MR. MOSS: I beg pardon, your Honor? What did you just say?

THE COURT: I said that is different from the job evaluation he was talking about.

THE WITNESS: Yes.

Q In what way?

A The piecework rate dispute.

THE COURT: Is that a different proposal?

THE WITNESS: Yes, sir; as I recall it.

Q Was it a different proposal about piecework rates separate from the job evaluation proposal?

A That is my understanding, yes, unless you lumped them all together.

Q I am not prepared to deal with that now, but we will look.

A The question of the termination of employees on layoff was a major item. The question of the company wanting to rescind the agreements of 1961 in all forms and all areas of the economic negotiations. I think that the question of the key classifications was important. I think that the union by making a concession on the tire building minimized that, but the other question of the company's request for other classifications still remained as a major issue.

THE COURT: You didn't think that was an important issue because you didn't think it was going to make any difference to the company, really.

THE WITNESS: We argued that, but they argued that it would.

Q Similarly, if it wouldn't make any difference to the company it wouldn't make any difference to the union, either, would it?

A You guys wouldn't buy the idea. The company wouldn't at the time.

THE COURT: That goes both ways. If it didn't make any difference you could just as easily have given in on it.

THE WITNESS: I suppose that could be said, but you would be stuck with it forever once it's in the contract. Two years or five years from now it's impossible to get out once you made a concession.

Q You testified that you were a troubleshooter for the International union in settling disputes, and that the Armstrong Company --

A Yes, Armstrong Rubber.

Q -- that there was a 120 day strike sometime around this period?

A No, it was later.

Q Sometime around the Conshohocken strike, wasn't it?

A No; later.

Q What about Mohawk, where there was a 90-day strike?

A Most of these were later. My experience basically at the time of the Conshohocken strike had been confined to the Firestone nationwide plants.

Q Were the labor difficulties you had at these companies, with the long strikes of which you spoke, related to economic issues?

A Yes. You would be surprised how many times in these situations the same proposals appear on both sides of

table.

Q You testified that you had been a chairman of a committee to review the piecework rates or the basic rates of Firestone?

A Piecework rates.

Q I understood you to say that that review took three years?

A Yes. It wasn't continuous. I think I testified this was on an on and off basis, that we averaged about two or three days every couple of weeks.

Q One of the provisions which the company said was an important item in their demands was the off standard rate of 100 per cent?

A Yes.

Q The company asked for 90 per cent?

A Yes.

Q Was that a big deal with you?

A Yes.

Q I understood from -- I can't remember whether it was from Mr. Hess' testimony or Mr. Vasko's testimony, that in the various plants inthe area off standard rates varied from 100 per cent to 90 per cent. Would you agree that that was true?

A Yes, but I want to caution you as to what you mean

by off standard. So often the word off standard means one thing to the person who hears it, but it means something completely different to others. For example, what is an off standard job? If a tire is built with a ply supposed to be 21-3/4 inch-s wide, if the ply is only 21-1/2 inches wide, is that off standard?

And in some cases in some plants this would be off standard, and in other places it would not. In some cases off standard means piecework rate is not applicable, and, therefore, it is "off standard."

And then that allowance would be applied. So the word off standard means different things in different plants.

Q The two witnesses who testified here so far are union witnesses, and they testified that off-standard rates apply when somebody was working on a machine and the machine broke down, and you could not have an opportunity to make your rate or there was poor material, things of that sort.

A Well, if a ~~man~~ machine broke down, the men wouldn't be operating at all, and in my terminology, that would not be off standard, it would be on down time or some other allowance.

Q I see. But you would agree that there were other contracts which had off-standard rate provisions which were lower than a hundred per cent?

A Yes, I think that would be a fair thing to say.

Q You also testified this morning that all the other major rubber companies had the same type of agreement, I believe, and I think you meant as the Conshohocken agreement; was that what you meant to testify?

A I'm not sure what you are saying. The same type of agreement on what respect?

THE COURT: I think that was only with respect to one item. It was in answer to my question. Mine was directed at only one group of -- and I cannot remember exactly what it was -- but I do remember it was to one

category.

MR. MOSS: It came right after Mr. Garber had been reviewing the eight or nine items which he said that Conway had requested, and I understood him to say --

THE COURT: One of those items that I directed that question to, but I cannot remember which one.

MR. MOSS: You asked it right after he had discussed either the greater management rights clause or that the union wanted a September 30, 1965, termination to coincide with their fiscal year.

THE WITNESS: I think it was in connection with the maragement rights clause, Mr. Moss. I believe, if I recall, I said that the general clause is that management has the right to operate the business, decide what products to operate, and to --

THE COURT: It was not that.

THE WITNESS: Wasn't it?

That's what I recall, it was in that connection.

MR. MOSS: It might have to do with the termination on the fiscal year. I understood the question to have asked about whether all the rubber companies, major rubber companies, had in general the same kind of contract as Conshohocken, but if you did not ask that, your Honor, I will ask it now.

THE COURT: I did not ask that. Sorry. I cannot help you.

Q Is it your opinion, your testimony, that all of the major rubber companies had a contract which was the same type as the Conshohocken agreement.

A If you're asking me if that was my testimony, I didn't testify to that.

Q I am asking if it is your testimony now. What is the answer to that question, what is the fact?

A Well, I wish you would tell me a little more in specifics. The same type? If it's printed on paper, yes, it's the same type; if it is printed in little booklets, it's the same type.

Q Mr. Vasko testified yesterday that he did not know in any of his experiences any rubber company, tire company, which had key job classifications written into their contract.

A That's one phase of it. I can answer that question.

Q Would you agree with that?

A I can't testify for Mr. Vasko; he has to testify to what he knows. I know there are other contracts that have that. I think you recall my testimony was at that time it was a fairly rare thing, but it's becoming more of a common thing since then.

Q Are you generally familiar with the contracts in the rubber industry?

A Yes.

Q If I showed you a copy of the Cooper Tire and Rubber Company agreement entered into on December 5, 1961, would you be able to tell whether they had key job classifications in that company?

A If they had it presented in their contract, it would be, yes. I think I had that contract.

Q Okay, that will be fine.

A Is this it?

Q Yes, I guess so. It looks like it.

A No, it's a different local. We'll go by yours.

Q Maybe yours has the same thing.

A Okay. What's your question?

Q Whether that contract does provide for key classifications which are exempt from the general rule of seniority.

A No.

Q No?

A Not here it doesn't.

Q Let me see.

A What they have there is another deviation from seniority which in effect says that you can only have so

many learners in any one classification at the time. And that would not be the type of key classification they were talking about.

Q Well, am I not correct that on page 28 of this contract it says that lay-offs and recalls shall be made in order of seniority within each job classification?

A Yes.

Q Then by department, right?

A Yes.

Q So this contract provided for classification ~~of~~ seniority and departmental seniority which should control in lay-offs and recalls, right?

A Yes.

Q That would have gone a long way to have resolved Lee's problems with respect to lay-off in key jobs, would it not?

A He never made that proposal to us.

Q That would be --

THE COURT: Mr. Moss' point is, is that or is that not dissimilar in effect to the proposal they were making?

THE WITNESS: No, completely different. This merely tells you the order of priority. Your first are laid off in a classification; then if you're excess in the classification, you bump the youngest in the department.

If you have something else in the plant, you bump the next one in the plant. That's what that says.

Q Look at F, which says:

"The following jobs shall be exempt from the general seniority provisions that permit replacing employees with less seniority and will be handled in accordance with the instructions set forth opposite each of the respective jobs."

A What's your question?

Q Does that show that the molded good pressman is exempt from the general seniority provisions that permit replacing employees with less seniority?

A Will you read what is in back of that?

Q "In not more than one per cent per shift in any month."

A The exemption from the standard seniority in that molded pressman classification is restricted to limiting the number of new employees that can come into the job in any one month.

Q That is your interpretation of the clause which says:

"The following jobs shall be exempt from the general seniority provisions that permit replacing employees with less seniority and will be

handled in accordance with the instructions set forth opposite each of the respective jobs"?

A Correct. That's the key, "and will be handled in accordance with the instructions set forth opposite the respective jobs," and each one of those jobs spell out how many new people can come into that particular job in any one given period of time.

THE COURT: That does not stop the fact that when you bump him, you do not bump those people in relation to the rest of the plant?

THE WITNESS: No. This says you can do it, but it limits the number that can do it.

THE COURT: You are talking about the number that can come in, not the number that can go out when I hear you say it.

THE WITNESS: Well, this works two different ways. I just read this contract for the first time two minutes ago. But what it says to me, in case of a cut back, you limit the number of people that can bump into these different classifications if they haven't had prior experience.

And, conversely, on job openings or on recalls, you limit the number of new, untrained, inexperienced people that can come into these jobs at any one time.

Q With respect to the job of tuber operator,

am I correct that it says alongside it "experienced persons only"?

A Correct.

Q It says the same thing for tuber mill men, tuber mill stock trucker, slitter operator, shipper, supplies press operator, trim and inspect boots, Banbury operator and Banbury compounded?

A Correct. What that means to me is this: That if anybody was an experienced operator in any of those classifications and for whatever reason bid out or was forced out, and if they later on wanted to come back, they would have the right to. Under a key classification they would not.

Q That is your interpretation?

A Yes, sir.

Q How important did you consider the recall rights, the length of recall rights?

A We considered that extremely important, because we thought it was a device the company had utilized in order to deprive an employee of either separation pay ~~pays~~ or his rights under the SUB and pension agreements.

Q You considered that to be so because they would not be on layoff with the required number of years in the SUB agreement?

A No, because the company was proposing that after they were on layoff for a given period of time they would be removed from the payroll.

Q Exactly. And didn't the SUB agreement provide that when you were removed from the payroll, if you met certain conditions, you would get a separation award?

A If he was still on layoff.

THE COURT: If what?

THE WITNESS: If he was still on layoff.

THE COURT: Still what?

THE WITNESS: On layoff.

THE COURT: On layoff.

THE WITNESS: See, one of the requirements in order to be ready for SUB, you have to be on layoff with the expectancy or have recall rights; whether you are going to be recalled or not is a different story.

Q Mr. Vasko testified yesterday, and I believe the SUB agreement says that when you have been on layoff for a certain length of time and you decide to leave, or if your employment is terminated, then you can be eligible for a separation payment; isn't that right?

A If you're on layoff; I believe at the time it was for two years.

MR. AUERBACH: Your Honor, that is not what

Mr. Vasko said.

MR. MOSS: Let us get the SUB agreement, then.

Q Mr. Garber, I show you what has been marked Exhibit 96-A and direct your attention to page 25, Article 12, Separation payments, and ask you if that does not provide for a separation payment after a person is on layoff and has recall rights, and that he can then elect himself to get off that, give that up and get a separation payment?

A Yes.

Q Yes, right.

Now, what you are saying is that the company was trying to get out of that by limiting the recall rights; is that right?

A That's correct.

Q Did you ever discuss with the company whether they would be willing to limit the recall?

A Absolutely. Their answer was that this was what they were absolutely trying to do. This requires you to have to be on layoff for two years, and if you're not on layoff for two years, with recall rights, and if you terminate your seniority or service for any other reason prior to that two years, you are not then eligible. And you fellows told us this is one of the things you were trying

to accomplish.

Q And you said in your testimony this morning that this significance of recall rights was that if you could remove such persons who were on recall for an indefinite time, that you would be able to eliminate certain obligations you might have under the various agreements, right?

A I think so. I'm not sure you stated it the same way as I did. But generally speaking, I think what you said was what I said.

Q So this had a monetary tag on it, right?

A Yes.

Q This was a monetary item?

A If you're saying the removal of people from the lay-off status to a terminated status had economic overtones, the answer is yes.

Q Had economic overtones, you say, because if the company could do that, then they would not have to pay them a separation payment under the SUB; that is your view of the matter?

A Yes, sir.

Q It also would allow the company to have certain less obligations tothose laid-off employees while they were on lay-off; isn't that right?

A Yes.

Q They had certain rights to coverage under welfare agreement and things of that sort?

A Yes.

Q And the company had made it clear to you from the very outset, even before these negotiations began, did they not, that what they were trying to achieve was as much economic relief as possible?

A Yes.

Q In the end, I believe you said that you made an offer to give up the sort of eternal recall rights and the company moved from its desire to be able to terminate people after six months to a willingness to extend at least that period for a year?

A Yes.

THE COURT: You were prepared to go to three years, I remember?

THE WITNESS: That's correct. And we also said in that three-year period, if the company wanted to negotiate a settlement with any one of those people, we would not object to that.

Buy them off if you want for a lesser amount than the full value.

Q That kind of payment was in the SUB agreement

called a separation payment; am I not right?

A That's correct.

Q Then you referred to a special distribution which you said you usually -- and I do not know what you meant by "you usually" -- called a severance award. Do you know of any contract which a special distribution upon the permanent cessation of operations in a particular plant was called a severance award?

A Not offhand, sir, no.

I think --

Q The one in Conshohocken was called a special distribution, was it not?

A Yes.

Q Am I correct that in most of the contracts with which you are familiar that a similar provision like that was called a special distribution?

A Yes, sir. They might deviate to the point that it might also cover a partial elimination of an operation versus a total plant cessation.

Q But that had to do with elimination of an operation or total plant cessation, right?

A Yes.

Q And the layoff, a person on layoff, would not be entitled to a special distribution until there was a

permanent cessation of operations in the plant if there were not a provision for partial, which there was not in Conshohocken, right?

A Right.

Well, that may not be technically correct. You said they would have to be on layoff?

And the plant --

Q I said a person on layoff.

THE COURT: He said if you were on layoff, you would not be entitled to this unless you met these conditions.

THE WITNESS: Yes. Okay.

Generally speaking, but you could have people on the payroll and shut the plant down, and those people would not be on layoff because they wouldn't be off with the expectation of recall. That's what a layoff is. They would be terminated under those circumstances. They would be covered by the special distribution.

Q People who were working when the plant closed down permanently, they were entitled to a special distribution?

A Even though they hadn't been on layoff.

Q But people on layoff were not entitled to a special distribution until there was a permanent cessation of operations at the plant?

A Yes.

THE COURT: Nobody was on layoff or off layoff. The witness is confused because he thinks you are differentiating between layoff and off, and you are not, in this respect.

Q Insofar as any of the agreements relating to Conshohocken were concerned, there was no provision anywhere in any of those agreements for anything which was specifically denominated a severance award, was there?

A Not that I recall, sir. I think that's been improperly used.

THE COURT: Mr. Moss, what is your prognosis?

MR. MOSS: I do not really think I can finish by 5:30.

THE COURT: If you cannot finish by 5:30, there is no point in going on. It disrupts the stenographic department.

You have to come back tomorrow, anyway. You will just as soon quit now, too, I suppose.

10:00.

You can be here tomorrow morning?

THE WITNESS: Yes, sir.

THE COURT: 10:00.

(An adjournment was taken to February 8, 1973, at 10:00 a.m.)

dhr 787

UNITED RUBBER, CORK, LINOLEUM
AND PLASTIC WORKERS OF AMERICA, et al.

vs.

LEE NATIONAL CORPORATION

February 8, 1973
10:00 a.m.

Trial resumed.

- - -

R O B E R T E. G A R B E R resumed.

CROSS-EXAMINATION CONTINUED

BY MR. MOSS:

Q Mr. Garber, am I correct that in the period 1962-1963, the contract covering the plant in Pottstown contained a key job classification provision?

A A limited form of it, yes.

Q And that was what plant? Was that a Goodrich plant?

A It was a Firestone plant.

Q Am I also correct that there was a plant

in Des Moines with your union which had a key job classification provision?

A I believe so. I can't tell you that with any degree of certainty because any provision pertaining to the seniority would be in a supplement; it wouldn't be in a part of the master contract with which I was familiar.

Q What plant was it in Des Moines, whose plant was it?

A That would be a Firestone plant, also.

Q I believe you testified yesterday on direct examination that you now carried a title of, am I correct, vice preside-t labor relations?

A No, vice president industrial relations.

Q Industrial relations?

A Yes.

Q For General Tire?

A That is correct.

Q In at least one of their divisions?

A Chemical/Plastic Division.

Q In the capacity, are you involved now with labor negotiations?

A Yes, sir.

Q Do any of those negotiations now involve

the United Rubber Workers?

A Yes. There's about ten plants out of the 17 involve rubber workers.

THE COURT: Ten plants out of 17?

THE WITNESS: Yes.

A Do you want to know exactly how many, Mr. Moss?

Q No, I don't care.

I understood you --

A Eight plants, I'm sorry, eight plants out of 17.

Q I understood you to testify yesterday that you came upon the scene as a sort of active participant in the negotiations on June 19, 1963.

A I don't know what you mean by "came upon the scene." I was assigned there to take over the negotiations.

Q I didn't mean anything wrong by that, you just appeared at the negotiations as an active participant in them on June 19, 1963?

A Yes, sir.

Q And also I believe you testified that on July 5, by July 5, 1963, you didn't believe that anything significant had been accomplished, any significant

concessions at all had been made?

A I don't know if I testified in that way, but I think that's a fairly accurate summation.

Q I think you testified that you believed that the only item that had made any progress at all was the company offered to increase recall from its proposed period of six months to 12 months?

A Yes. I said that.

Q That's what you said?

A I said there were also some other minor things that were agreed to and changed but of the major items I think that was the only one that was changed to any significant manner.

Q Am I correct that at the July 5 meeting the company ~~wasn't~~ went over its main demands and that you said that by this time you were willing to go along with a two-year extension of all the present agreements?

A I know that was said, Mr. Moss. I don't know if it was on July 5 or not.

Q And that you made a counter proposal of a profit sharing nature?

A We made several counter proposals, sir.

Q Is that the counter proposal which you were discussing yesterday about the 15.5 cents or 15.2 cents of

cost which if they rose you would be willing to take a wage cut the following year in the amount of the rise in cost?

A Yes, sir.

Q That if there were any savings during that year you suggested that you get 75 per cent of them and the company get 25 per cent?

A Yes, sir.

Q Was that supposed to be a counterproposal to Mr. Clairmont's offer of productivity sharing or profit sharing which he had made on July 3?

A I don't know if we just lined up all of the proposals on one side and there's some on theother side, this is for another, and this is for another. That was ~~the~~ a proposition to settle the controversy.

Q You had been at the meeting of July 3 at which Mr. Clairmont appeared, were you not?

A Yes, sir.

Q You all rejected Mr. Clairmont's productivity sharing proposal?

A We didn't accept it, agreed.

Q There is a difference between ~~projecting~~ rejecting it and not accepting it?

A Just a question of semantics.

Q I see.

THE COURT: You like your word and he likes his word.

Q Your proposal for productivity ~~shares~~ sharing didn't give the company any relief in itself from its then costs, did it?

A You mean if there was an immediate decrease solely for the purpose of its compensation cost? The answer would be no. But as we pointed out to them we didn't think that was the source of the problem to start with. We had demonstrated through the Strong-~~Narovich~~ Narovec report and through the company's own figures that the employment costs or the costs of converting a pound of rubber fluctuated dramatically as soon as there is more pounds of rubber produced in a given month, and we demonstrated that between March and April, because of that increase in production alone, the employment costs or conversion costs were increased.

Q Conversion cost is not the same thing as employment cost, is it?

A No.

Q The employment costs weren't going down at all, that all depended upon how many people you were paying, right? And the cost per man hour depended upon

the number of people you were paying and what was their average rate and what were their fringe benefits rates; is that correct?

A Yes. Salary ~~or~~ per hour, because that's all considered.

Q It's obvious that conversion cost, the more you are producing, the lower the cost, and that is because conversion cost includes some general cost items, administrative cost items, and taxes and things like that, does it not?

A I think in the context that the company had explained to us what they used as conversion costs, they excluded certain of those items.

Q The Strong-~~Narovich~~ Narovec report itself says what they considered included in conversion costs, did they not?

A Yes.

Q But your testimony just now, I take it, ~~with~~ was a slip of the tongue that the more they produce the more their employment costs went down?

A All right. If you want to say conversion costs, I should have stuck with that.

Q So your proposal gave no relief to them on their employment costs, at least for the succeeding year?

A No, I think that you find that one of the things we agreed to do, for example, that was offered to us, was to reduce the allowance from 100 per cent to 95 per cent. That was one of the proposals --

Q I'm talking only about your so-called productivity sharing proposal. I understand there were other proposals which you considered went some distance to lessen the company's costs?

A If you are speaking only of the productivity sharing. There was no immediate reduction in the conversion cost per pound solely as a result of our proposal. But as we pointed out again, to the company, and to you here, the employment costs or the converstion costs are something that is almost a hundred per cent within the control of the company, aside from the fluctuation and number of pounds produced. It depends to a great extent on how the company utilizes the manpower that is available. If they have tire builders mowing grass or sweeping, their costs will go up but the number of pounds converted will not.

Q Yes, I understand that.

I believe your testimony was that on July 3 or July 5 that the union made counterproposals concerning wages which we have just been talking about,

and that they said they would give up their demand for a wage increase. Do you recall whether or not you formally abandoned that or did you just give some indication that if the company took your proposal that you would give up your demand for a wage increase?

A We had said to them we would extend the present contract which in effect, by extending the present contract,you don't have wage increases or changes in fringe benefits up or down.

Q What you're saying is that your offer remaining by the old contract effectively withdrew your previous demand for a wage increase?

A Yes.

Q Had the demand for a wage increase been a serious demand at the outset?

A It was a serious demand as far asthe union was concerned but I think the company countered it very well when they said we want a 25 per cent wage reduction.

Q You had been in some of these preparatory meetings, had you not, at which the company had set forth their economic situation?

A Mr. Moss, I don't know what you mean by preparatory.

Q Had you been in the April 16 meeting in

Akron?

A No.

Q Had you heard about the April 16 meeting in Akron?

A Yes, sir.

Q You obviously were quite familiar with the Strong-~~Narovich~~ Narovec report?

A Yes.

Q Did I understand that you agreed with the Strong-~~Narovich~~ Narovec report?

A I don't think I testified to that, sir.

Q Well, did you or did you not agree with it, with its findings and its conclusions and the figures that were in it?

A I think I could understand how they arrived at their conclusions, I don't think they were too far off base. Their basic conclusion being that the big problem was the lack of sales and that relief in the employment field would have a very minimal effect on the total company operations.

Q I understand that you have taken the position in your testimony that the Strong-Narovich report said that rise in productivity or a reduction in the increase in production per man hour won't have any effect upon the

company's situation?

A I don't think I said that, sir.

Q You haven't. Well, you have tended to stress, have you not, the fact that in your opinion and the union's position, the only problem of the company was the sales?

A That was the major problem. I did say that the changes of employment costs or conversion costs would have a minimal effect and it would not achieve the desired effect the company was looking for.

Q The Strong-~~Narovich~~ Narvel report itself, and I draw your attention, if you have it there --

A Yes, I have it.

Q -- to the bottom of page 1 and the top of page 2 at first. It says "The company produced contract data and correspondence verifying the loss of a major portion of its business which formerly originated from a single purchaser. The company is seeking to ~~rebuilt~~ rebuild its volume by means of a drastic reorganization of its branch operations and with its private branch sales but can only achieve this goal by a reduction in cost which will permit it to price its products at a competitive level."

Does that indicate that there were two facets

to the company's problem, one was a lack of sales and one was a high production cost which made it difficult, if not impossible, for it to price its products at a competitive level?

A That statement was made, sir, and I draw your attention to the conclusions arrived at by Mr. Strong-~~Narovich's~~ Narovec's company, page 5, it says, "Until such a time as a sales volume is increased substantially, however, the effect of cost reduction and productivity increases, although unquestionably of great importance, will only be a reduction in the current amount of monthly losses."

Q I understand that.

THE COURT: This first sentence that you just read suggested sales volume ~~account~~ cannot increase unless the ~~union~~ unit cost is reduced. Which is the chicken and which is the egg?

THE WITNESS: It's aquestion of which comes first. I have known many different companies in many different industries. For example, we can go out and take business at a loss in order to obtain the business and obtain the relationship. I agree it's a question of which comes first.

THE COURT: And how much money the company's

got?

THE WITNESS: This company had quite a bit.

Q The fact of the matter, Mr. Garber, is that you would agree, I take it, you just agreed with his Honor, that the Strong-~~Narovich~~ Narovec report ties together lower production cost with sales and indicates that you can't expect to increase the sales without having production cost lowered so that you could be in a competitive position to get the sales, am I right?

THE COURT: Unless you only take a loss, he said.

Q Unless you are willing to take a loss or a further loss?

A I don't quite agree with everything you have said, sir. I think inherent in the report itself is the fact that in the event of increased sales or production, the employment costs or the conversion costs will be reduced?

Q Yes, of course, everybody knows that. I'm sure the judge knows that, I know that, you know that, but the Strong-~~Narovich~~ Narovec report also says, does it not, that "Until the volume of sales are substantially increased, however, the effect of cost reductions and productivity

increases, although unquestionably of great importance, will only be a reduction in the current amount of monthly losses."

A Yes.

Q Now, I suppose you have noticed that the table at the back of that report shows that the current monthly losses were varying from 72,955 in the month of November, 1962, going almost ever upward but then downward in April to $221,019 in April. Now, it is your suggestion here that saving money or mitigating those losses is not going to be a substantial benefit to the company?

A No, I'm not saying that the company was in business to lose money.

Q You had testified yesterday, I believe, that you told the company that a wage reduction wouldn't do anything to solve their problem because their problem was sales.

Now, it would have reduced their monthly losses, would it not?

A I don't know, sir. The only thing I can point out again as I did yesterday is that in a reduction of 8 cents a pound in commercial cost which in effect represents 91 or 92 thousand dollars, the net reduction

in losses only amounted to $20,000. So it's something that's just not -- your statement just can't be made in that way and be accepted as 100 per cent.

Q I see.

A You get $91,000 in savings and labor, but your losses are reduced by only 20 per cent.

Q I just wanted to see if we could come to some agreement that your statement yesterday in your examination that reducing wages andthus the cost of employment won't give the company relief. You thought it wasn't going to give the company enough relief to justify your even considering it, but it isn't true it won't give it any relief?

A Obviously, if the company gets employees to work for nothing they might say this is a savings to us but I doubt they get many employees to do that.

Q That's not precisely the question I asked you, is it?

A I'm not sure I understand what the question is you asked me.

Q The question is, you testified yesterday that you told the company that a reduction in wages would not give them any relief and I'm suggesting to you that while you don't agree with me that it would give them significant relief, that if you cannot all agree with me it would have given them some relief?

THE COURT: The Court will take judicial notice it will give some relief, he meant they didn't give him enough relief to warrant him doing it.

Q He went off in some --

A I don't mean to go off and not answer questions, sir, but I still come back to the fact it depends what those employees are paid for. If you have tire builders standing around not building tires and you pay them tire builders wages and you can obtain substantial relief by having tire builders build tires --

Q Let me ask you something else while we are on that subject, what is the point of the company building a large number of tires every day for which it has no sales?

A Well --

Q No customers, I ought to say.

A I don't know if that's a fact or not. I heard references and the company was making references to the fact they were having problems in the sales area but we took note of the fact that the company, in our opinion at that time, seemed to be doing things contrary to what would normally be done to increase sales. For example, they closed certain sales outlets, they tightened up their credit restriction; this may have been done for other reasons but it also had the net effect of reducing the amount of sales volume available to them.

Q You suggested here and its obviously true the ~~conversion~~ conversion costs of rubber can go down if you produce more tires, right?

A Yes, sir.

Q And you were suggesting, I believe, in your testimony if the company had known what it was doing or was in good faith in what it was doing it would have

produced more tires daily?

A Yes, sir.

Q Same?

A Same as the previous owners had been doing for a number of years under similar circumstances and same wage ~~rights~~ rates and same fringe benefits and ~~she had~~ showed a profit.

Q You say they showed a profit from what you see of the annual statement?

A Yes, sir. That is what the officers of the company said in their stockholders reports and they said the previous owners were putting ~~of~~ out these tires at a certain volume and were making money and it showed it. Now the new people came in and took over and said they did not concur in that brand of business and they wanted to go off in a different direction and they did and this is what resulted.

Q Are you aware of the fact that in the closing years of the Garthwaite administration that the Phillips account which was a major portion of the company's business had been lost and was by contract reducing itself to zero at the end of five years.

A We had been told that. I don't know what period of time or at what point that came about, whether it was after Clairmont's group took over or before.

Q Were you also aware of the fact that in the spring of 1963 before you first entered the negotiations personally, anyway, that the company had written to the union and said that they wanted to take a chance on increasing their production and asked the union's permission to recall some tire builders out of seniority in order to raise their production from 2400 tires a day to 3000 tires a day.

A I have since seen -- is that the May 1st letter from Mr. ~~Barclay~~ Barkett?

Q Yes, sir.

A I have seen that, yes, sir.

THE COURT: You didn't see it at the time?

A I didn't recall seeing it at the time, sir. I don't remember much conversation in our negotiations and -- wanting to recall tire builders out of seniority. I don't recall that.

Q Are you aware of the fact that the company, the union, had rejected that proposal in May?

A Yes, sir, and I think the union's reason for rejecting it is they were not utilizing the existing tire builders they already had on the payroll to build tires. They were doing other ~~weird~~ work.

Q It is your position that the letter of

request which they sent was another evidence of the lack of company good faith, it was a fraud or sham?

A I don't think I said that.

Q You didn't. I just asked you if that is your point of view.

A If in the context and if the company knew they were having or did have people on the payroll and available to build tires and not being utilized as tire builders and in that context the company wanted to recall additional tire builders out of the line of seniority I would say yes, sir.

THE COURT: What would the company gain by recalling ~~additional~~ additional tire builders if it wasn't in good faith?

A Well, the same thing they could have gained, sir, if they had used the people that were on the payroll.

THE COURT: Assume they were using them correctly, as you say, and I've asked this same question of Mr. Hess because it puzzles me, as a negotiator, if I thought it was a bad faith offer I would say go ahead and do it and how can the union have been hurt and how could the company have gained by calling back a lot of tire builders they weren't going to use?

THE WITNESS: How could the union have

been hurt? I don't know, sir.

THE COURT: Mr. Hess said the same thing, he didn't say what you said, he said what Mr. Moss asked you whether it was your view. He thought it was a bad faith letter and it seemed to me if it was a bad faith letter the thing to do is accept it. I don't see what they gained by rejecting it.

THE WITNESS: One of the problems you do have when you have a union organization, sir, it might seem the logical or sensible thing to do, but when you go out and explain to an individual who's laid off and has the most seniority he is not going to be recalled but somebody else with less seniority will be recalled it's pretty difficult thing for that individual himself to understand.

THE COURT: I imagine it is but if you can't explain it to him it's either this guy or nobody; I should think they must have some confidence in their leaders and they tell them this is a ploy by the union and company and they call their bluff and George is going to get a job for a few weeks and will lose it because the company is bluffing; I don't know, maybe I'm naive. It seems to me you can explain that to unions.

THE WITNESS: You can, true, but it's difficult. These individuals who feel they are being hurt have a habit of showing up at membership meetings and scream their rights are being violated and not being treated right and a lot of people listen to them.

THE COURT: That's in your expertise. I have none, I know that.

Q You testified also yesterday, Mr. Garber, that on July 12 you made an offer, a proposition, which you thought would totally settle the contract and I believe the first was a proposal --

MR. AUERBACH: I don't know, your Honor -- the witness testified he made an offer that he thought it would totally settle the contract.

Q Why don't I read the transcript at page 694:

"Did the union try anything else to be flexible in the way of offers after that?

"A Yes, sir, about a week later on July 12 we gave them a proposition which we thought would totally" -- and the transcript says "sell the contract" but I believe you said "settle the contract."

THE COURT: He did say "settle."

Q Because he said "settle in the next statement.

"Q On July 12th?

"A Yes.

"Q Can you tell us something about that, please.

"A Well, yes, I am -- I think the first item we addressed ourselves to in that proposal and we gave it to them is a total proposal to settle the entire contract."

The first item dealt with pension contribution. Am I correct that at that meeting the company asked you for some comment onyour proposals, on their proposals, rather, and that you first wanted to talk about the shipment of molds out of the plant and particularly, after some discussion about that, you made a proposal to the company, a package proposal; is that what you meant, the fact it was a sort of package proposal, that it was a proposal which you thought would toally settle the contract?

A Yes, sir. The company had been continuously saying that they didn't want to get into any of the minor issues until their major items were handled and in our opinion this proposition did handle or did make a concession on the major items.

Q And the first one was a proposal to work out some kind of less expensive pension payment into the fund to take care of past service liability?

A Yes.

Q And the other, another one was to allow that company to go individually and work out individual arrangements with laid off employees in settlement of their right to the separation payment under the SUB agreement, that is right?

A Yes, sir, that was one of the others. That was, by the way, Mr. Moss, a fairly important one, that could have meant a considerable savings to the company.

Q And am I not correct the company asked if there was any possibility existing for a wage hike on the basis of temporarily being restored after a period of time if certain labor costs were retained? You recall that company proposal?

A No, I think, the only thing I recall that was even close to that would be the one proposition the company had made pertaining to declassifications and at one time they said that after a certain level of production had been reached they would remove that key classification requirement from those additional classifications.

Q You don't remember any offer, any request to you as to whether you would consider a wage cut on some kind of agreement by the company to restore it after a

certain production cost per pound ~~per region~~ was reached?

A Sorry, I do not.

Q You don't recall either receiving such an offer or rejecting it, rejecting it on the ground that the membership won't stand for it and if you gave it to Lee all the other rubber companies would want it?

A I do not recall any such.

Q About this time or at any time during the contract negotiations before the strike, was there any talk, discussion, between the company officials and the union officials at the negotiating sessions about the Dunlop wage decrease? I realize youexplained it in a different way as not being a wage cut yesterday but was themany discussion of it, at the negotiation sessions?

A There was some, yes, sir, but it wasn't harped upon, it wasn't concentrated upon. There was discussion about it.

Q Did Mr. Heinrich seek to bring up with you how come Dunlop could get a wage cut, but Lee couldn't?

A The company did make that point whether or not it was Mr. Heinrich or not I could not at this time recall.

Q Did you at that time describe to Mr. Heinrich

the sort of intricacies of the situation; you testified yesterday it really wasn't a wage cut and all had to do with tightening up incentive rates and things like that?

A Yes, and I also explained to him at the time that Dunlop at that time was 10 per cent higher than the average of the entire industry.

Q You discussed that with Mr. Heinrich or some of the company officials openly cross the table?

A Yes, sir.

Q Isn't it true you had a conversation with Mr. Heinrich personally in which you told him that as far as the International was concerned that the Dunlop arrangement had been a mistake and that the International Union was determined to see it was never repeated anywhere else and you would not be able to consider a wage ~~increase~~ decrease in this situation because if the Dunlop situation were allowed to proceed farther with Lee that everybody else would want it.

A You mean a private conversation that just he and I had.

Q Yes, sir.

A We had several of those. I think I said something along those lines but not in context of what

you said. What I did tell him was that the Dunlop wage adjustment was not approved by the International union. The International union was not party to it and this was something done solely by the local union only. The constitution of the rubber ~~workers~~ workers requires any such agreement be submitted to the International for approval and this particular agreement was not and it was not approved by the International union.

Q That doesn't mean it wasn't an effective agreement.

A That's correct. It was an effective agreement.

Q It was publicized fairly widely in the business press, was it not?

A Yes, sir.

Q The Wall Street Journal had a long article about it?

A I didn't see or I don't recall seeing a Wall Street Journal article but I would not be surprised if it appeared in there.

Q Getting on with the July 12th meeting, am I correct that at the meeting Mr. Conway reported on the company's present position and his report was substantially that the company was willing to reduce its

wage reduction demand from 25 per cent to 20 per cent with no strings attached, no quid pro quo for that reduction?

A I don't recall.

Q It wasn't saying, "If you'll do this for us we will reduce it to 20 per cent." They just said, "Our cut demand is down to 20 from 25."

A I don't recall that.

Q You don't recall that?

A On July 12?

Q Yes, sir, July 12.

A There was no morning session on July 12th and the afternoon session didn't last too long. I don't recall that, no, to answer your specific question. And I don't believe it happened.

Q Do you recall whether or not at that time on job evaluation Conway reported that they had, you know, by that time, come up with the proposal for an arbitrator and that you had sort -- the union had agreed in principle something could be worked out and the company felt that was going to be a settleable matter?

A That was one of our problems right along. We had discussion across the table and thinking we had reached the point where that particular item could be

agreed on between the negotiators and the union and came back next time around and that seemed to miss the target. The company's proposals were withdrawn.

Q I'm not talking about anything subsequent to the July 12th meeting. You testified at length ~~before~~ for your counsel yesterday, to your counsel yesterday, about the July 12 meeting and that was really the last meeting before the strike?

A Yes, sir,

Q And you don't recall that the company said that you all seem to be in agreement at least in ~~principles~~ principle on job evaluation and that didn't look like it was much of a problem.

A I'm saying to you at a number of different meetings we seemed to be narrowing our differences on particular subject matter between the company negotiators and union negotiators, but that seemed to fall apart at the next meeting. That was one of them.

Q I'm just talking about this meeting at the moment for a particular reason.

A All right.

Q You testified at length, either referring to your own notes or from your memory, about the July 12th meetings, I think I should probably tell you

leaving me, frankly, with the opinion that you wished to give the impression that the company had made no significant concessions or indicated any significant agreement on any of the points which they had been sticking on up to that date. I'm now just asking you whether you recall at the meeting, what we have gone through so far, the company had reduced at the meeting its wage demands from 25 per cent cut to 20 per cent, that it had said job evaluation seemed to be now on the company's proposals within something which could be worked out, so that was not too much of a deal --

MR. AUERBACH: I don't think, your Honor, that is what the witness testified to, it was not much of a deal.

Q I'm asking him if it isn't true Conway said they agreed in principle and so that didn't seem to be a big item between you.

A I don't recall it being said at the July 12th meeting.

Q Do you recall its being said the company would extend to two years the recall rights providing that the union would accept the amount in the SUB agreement fund as the maximum amount of payment required.

A That proposal was made somewhere. I think

it was a proposal made in writing. I don't believe it was made at the July 12th meeting, but it was made some point in time.

Q You remember whether at the July 12th meeting the company said that while they were still sticking with their original proposed management rights clauses that they thought if the other matters reached an agreement there won't be very much problem about arriving at a satisfactory clause to them?

A No, sir.

Q You remember their telling ~~them~~ you it was their company counsel who suggested because of various recent court decisions the management's rights clause should be more specific than it had theretofore been in the contract and that was one reason they were trying to tighten it up?

A That statement was made. I don't know again whether it was made on July 12th, sir, but it was made.

THE COURT: I want to ask -- all right if I interrupt?

MR. MOSS: Yes, sir.

THE COURT: Remember those two proposals the company offered for a temporary extension of the --

THE WITNESS: Yes, sir.

THE COURT: -- with a seven-day notice, was it?

THE WITNESS: Yes, sir.

THE COURT: And you explained the union didn't want to sign it because that might get involved in legal complications about a signed agreement?

THE WITNESS: Yes.

THE COURT: Was there any discussion about oral assurances they could have a seven-day notice?

THE WITNESS: Yes, sir, there was some discussion about working on day to day basis.

THE COURT: Not day to day basis. The company wanted assurance on seven -day notices they could ~~clear~~ clear out the product; was there any discussion about oral assurance for seven-day notice?

THE WITNESS: No, the union did not really give them a seven-day oral notice. They did agree to give them advance notice and I think they asked them about 24 or 48 hours' notice.

THE COURT: That won't be enough to get the stuff out.

THE WITNESS: That's about what the normal situation would have been in any company; when you went on

day to day extension, if you give the company 24 or 48 hours people are satisfied with it.

THE COURT: That's all they offered orally, 24 to 48?

THE WITNESS: To the best of my recollection, sir, yes.

Q Mr. Garber, you also testified yesterday that in connection with the limitation on recall rights your package proposal of allowing recall rights to be limited to three years and the company to be able to approach individual people to settle their separation payments, you also testified that in other words if the guys special distribution payment or separation payment under the SUB plan might amount to $4000, if they wanted to negotiate with him he might be willing to accept $500 as a complete settlement and we agreed to let them do that on any individual member and we would accept.

That was your testimony yesterday. With respect to laid off employees, under the contract there was ~~not~~ no special distribution payable to a laid off employee until there was a permanent cessation of operations at the Conshohocken plant, was there?

A That's right.

Q That's right?

A Yes.

Q There was none?

A Yes.

Q Now you then went on to say that you had addressed yourselves to the question of the direct wage reduction and we said we would take a 5 per cent wage reduction but that we would want that guaranteed or backed up in the form of taking 5 per cent of the wages in the form of company stock?

A Yes, sir.

Q Now, could you elucidate that a little bit?

A I can if you like, yes.

Q You were willing to allow the company to decrease each person's wages by 5 per cent?

A Yes, sir.

Q And at the time of that reduction also when their wages became due, pay them or credit them with 5 per cent of the stock?

A Yes, sir, that was the proposal and we assumed there were certain shares of treasury stock that would be utilized for this purpose.

Q And you thought that that would be a cost saving to the company?

A Yes, sir; in a direct pay out of wages.

Q You are talking about the fact it would require the company to pay out less in cash at any given moment?

A Yes, sir.

Q Wasn't it your testimony just a few minutes ago that cash was not the employees' problem?

A No, I don't think I said that. I said sales was a big company problem.

Q You said something to the judge about the fact they had plenty of cash?

A Yes, sir.

Q They had plenty of cash?

A There was money available. The company told us that. The stockholders report said that.

Q You know anything about the costs of running such a stock allocation program to the company?

A No, sir, I -- we didn't get much reaction to the company to the point we discussed the mechanics of it.

Q Well, the company's reaction was to reject that proposal immediately on the stated ground it wouldn't give them any actual cost relief, wasn't that true?

A Yes, sir.

THE COURT: Mr. Moss is asking do you have any information that would be able to evaluate whether that was a good faith answer or not. In other words, if it was going to cost them more than 5 per cent of the wages to go through the paper work to issue stock they won't save any money.

A I don't believe that to be a fact, sir.

THE COURT: You know it is a fact?

THE WITNESS: No, it would mean the individual could be credited by one employee in the payroll department at the end of the year if he might have the equivalent of X number of shares of stock from the corporate treasury; I can't envision this would be any large expenditure whatsoever for the mechanical means of doing that, of crediting a guy with a certain number of shares of stock.

THE COURT: I don't know if that is true or not.

THE WITNESS: He won't have to physically get the stock certificates every week or every month. There's a number of plans or number of companies that do provide stock purchase plans or some kind of stock incentive plans and this is not a big expense item, the

mechanical means of doing that.

Q Well, stock purchase plans and stock incentive plans are rather different from stock which is credited to somebody in payment of wages.

A It's a different idea, yes, sir, but the mechanical means of accomplishing an individual account with a certain number of shares or fractional shares of stock would not make any difference.

Q What about the cost of registration; registering treasury stock with the SEC?

A It wouldn't make a difference whether it was stock purchase plan or this plan.

Q You didn't think it would have cost the company anything?

A I didn't say that. I think it would be a minimal amount.

MR. AUERBACH: I think the Court can take judicial notice the company doesn't have to register treasury stock.

THE COURT: You don't know if I can take judicial notice of it?

Q Treasury stock is an asset of the company, is it not?

A Yes, sir.

Q If you're handing out the assets of the company to your employees whether in the form of cash or stock the assets of the company are being depleted as an item of cost. Am I not really correct about that?

A I think it has the net result of that.

Q I think you're saying they won't have to lay out in cash week to week 5 per cent of the cash that they would have without that.

A That's right.

Q When Mr. Clairmont appeared before the negotiating committee on July 3, he made a productivity sharing offer. What was the matter with that offer as far as you all were concerned?

A The biggest thing it was connected with the 25 per cent wage cut.

Q That's right. And the reason he made it, was it not, or at least the alleged reason he made it, was to offer the employees by greater productivity an opportunity to recoup the wage cut?

A Yes, sir, but they again -- the utilization of the employees in the plant is entirely up to the company.

Q I understand your pint about that, but this was his reason for saying that he would do it and he

offered it on that basis, did he not?

THE COURT: He stated he had no way of knowing.

THE WITNESS: That's what he said.

Q Now you talked yesterday about the Dunlop plant, and the fact that that wage relief or that financial relief was attained by, I think you said "tightening up" the incentive rates?

A Well, those that were loose were tightened up and those on average were let go and there were adjustments up and down.

Q So it was either a lesser payment for the same amount of production or there was a greater production which made the cost of the company less?

A Yes, sir.

Q In the Dunlop situation?

A That's correct.

Q Well, now, and you also testified yesterday, I believe, that a job evaluation program and an incentive rate, a change in the incentive program was a long and a rather complicated endeavor, did you not; changing incentive rates?

A But I'm not sure.

Q The changing incentive rates is rather complicated and takes a long time.

A I think it's a true statement. I'm not sure I said it yesterday in those words.

Q I thought you did. But it takes a while to change incentive rates, especially if you have to go through the procedure which the union wished to have the company do it, and then they object and then have grievances and arbitrations, etc. So it is a time consuming process, is it?

A If you are talking about changing an individual incentive rate, that can be done very quickly.

Q I'm talking about the overall rates in effect.

A Revising all the incentive rates would be a major task, yes.

Q At least one way, whether it was an acceptable way to the company or not, to possibly increase production in that plant was to lower the basic wages and offer a productivity sharing plan, was it not?

A The reduction of wages wouldn't have given them more production.

Q Well, that is your point of view.

A No, that fact alone --

Q The reduction of wages, I suppose we shouldn't argue about it, but isn't it fair to say that a reduction in wages coupled with a productivity sharing plan might well increase the productivity at the plant if the employees who were working under that basis thought it was a genuine practical, workable offer?

A I suppose that might happen, but it wouldn't happen as a direct result of those two actions alone.

Q Well, it would require some good faith on the part of the employees?

A And of the company.

Q And of the company, exactly. Exactly.

A And then the two of them, in light of the good faith, would have to take certain actions that would bring these changes in productivity about.

Q You suggested that the problem at the plant wasn't that the employees weren't working hard enough but they were not working at the right jobs, you suggested yesterday.

A That was one of the items.

Q You also suggested if anybody got a wage cut it wasn't going to increase productivity at the plant because nobody was going to work any harder if they had a wage cut?

A I would say human nature would indicate that.

Q Isn't it possible with good faith on both sides --

THE COURT: I think he said it is.

MR. MOSS: He did?

THE COURT: He said it has to be good faith on both sides.

Q Mr. Garber, at the meeting of July 3, Mr. Clairmont, I believe, in his statement said that the door of the company was ~~also~~ always open, they would be glad to show the union any of their records and books in support of the statements he was making with respect to the company's position, do you recall that?

A I think there was some reference made to that, yes. I'm not sure the reference was in the future on a prospective basis or if he stated that they had offered to do that at the meeting he attended in Akron. There was some reference made to the books.

Q Anyway, yesterday you testified that you occasionally go and audit companies. I don't know quite precisely what you meant by that but that was your testimony.

A Yes.

Q When you go and audit companies, what does that mean?

A I look over the records when they make a statement they can't afford an increase. They gave me the factual information.

Q Did you take the opportunity to audit or check the records of Lee as Mr. Clairmont had said they would be glad to have you do?

A No, I didn't have that opportunity, sir.

Q You didn't have the opportunity?

A No.

Q Did you ask for it?

A Yes.

Q After he proposed it?

A After the July 3 offer where they said the books were available. All through these things we had been asking for additional information about the books.

Q I understood that yesterday you testified that at least on various occasions when you asked for information the information was forthcoming?

A That was onthe productivity or amount of production, number of man hours. Basically, the information that was contained in the Strong-~~Narovich~~ Narcvec

report, we asked for information on the number of people on layoff and the seniority of the people in the key classification. That information was furnished to us.

THE COURT: I got the impression yesterday that whenever you asked for information, you got it.

THE WITNESS: Basically, we did.

THE COURT: You just told Mr. Moss the opposite.

THE WITNESS: Well, we are talking about information pertaining to the collective bargaining agreement and its aspects, or we are talking about books. The company in the meeting, as I understand, of April 16, 1963, in Akron, had made this statement, that the books would be available. I was not at that meeting.

THE COURT: Mr. Moss' questions, did you ever go to the company and ask for anything that you didn't get?

A I didn't ask specifically for the right to go in and personally audit the company's books.

THE COURT: Did you ask someone else to go in and do it?

THE WITNESS: No, sir, I didn't.

THE COURT: Then what did you mean when you told Mr. Moss that you didn't get, were ~~reduced~~ refused information?

THE WITNESS: At that particular time, April 16 was when the first offer was made, and I was not assigned to Lee at that time. I knew there was a conference, there was information, and exchanges of information between the Lee Company and Mr. Roy Ockert, who was the then research director. He had made the request to come in to audit the company's books in connection with certain ofthese operations, and then by telephone or some other means had asked them to send them certain information to him in the mail rather than him coming in.

They did supply him with certain information which he said was not sufficient for him to make a proper evaluation. That was in connection with the back mill, the tubes and certain other of their operations.

THE COURT: Then did he go back and ask for more?

THE WITNESS: They, in writing, told him that this was the only type of information that they either had or could dig out.

For example, they took the operations, the total operations, for a period of five years and lumped it all in one figure, and would not break it out into a yearly basis or any lesser unit of time basis. And he said "That information on a five-year lump figure is not of any value to me."

THE COURT: That wasn't your personal experience, that was the other fellow's?

THE WITNESS: Correct.

MR. AUERBACH: Your Honor, I would like to point out that Exhibit 90A, which is in evidence, and that's the meeting of April 16, the minutes show that Mr. Ockert, who was the research director, said at one point, in answer to Mr. Clairmont, "This is what we wanted a chance to look at but I was not given an opportunity."

THE COURT: What did Mr. Clairmont say?

MR. AUERBACH: He didn't address himself to that. He said "Let's look at the general picture." He didn't respond to that, he just went on.

Q I'm correct, am I not, that the union had not only gone along with the Strong-~~Narovich~~ Nirovet report in its inception but, I believe the testimony the other

day was that it was the union who had brought Mr. Barbu to the meeting at which doing the report was proposed.

A I don't know if that is factual or not.

Q You don't ~~do~~ know anything about that. But you are aware of the fact thatthe Strong-~~Narovich~~ Nhrovec report informed you that the various figures presented by the company to the local and international union at the meeting in Akron, Ohio, on April 16, had been found to be correct, that the loss claimed at that time had been verified and had continued at an even greater rate to date, right?

A That statement is contained in his report, yes.

Q Going back for just a moment to the Dunlop situation, in the course of the negotiations did you ever offer Lee an opportunity to work out an arrangement such as the Dunlop arrangement?

A We thought that our productivity sharing proposition was along the same lines.

Q I see.

A You see, the company --

Q I understood you to say --

MR. AUERBACH: Your Honor, he was answering a question.

MR. MOSS: He was adding something while I was thinking. I don't necessarily mean to cut him off, Mr. Auerbach. You like to give the impression that I'm trying to keep Mr. Garber from saying everything he wants to say. I'm not. I'm thinking in the question and in the silence he decided to fill in the gap and I spoke at the same time. That is all there is to it.

Q What would you like to say, Mr. Garber?

A I would like to say that part of this whole thing is that even with the relief that the company was asking for, they wanted to go further and in their proposition on the piecework rates, they ~~want~~ wanted further rights, an indefinite right in the future, at any time to further change piecework rates.

Q I understand that you are saying with regard to incentive rates and things of that sort they wanted to have a significant amount of leeway which you didn't want them to have?

A They wanted to have the right to do anything they wanted to do.

MR. AUERBACH: Your Honor, he is still interrupting the witness and sliding off.

MR. MOSS: I am not interrupting the witness.

The witness and I are talking at the same time, unfortunately.

THE COURT: Don't make comments, just make objections.

Q Why don't we keep it going in a tennis court way. I don't mean to interrupt you from saying anything you want to say.

A Your turn.

Q I wanted to know whether or not you ever made a specific offer to the company to permit a re-adjustment of incentive rates similar to what you described to be the incentive rate adjustments for Dunlop in order to grant them an equivalent amount, at least an equivalent amount, of economic relief?

A No, sir.

Q No, sir.

THE COURT: Don't say anything else until he asks you another question.

Q Yesterday in your examination you said that you verified the fact that on July 16 the company notified you that it was unilaterally putting into effect certain work rules which accompanies a letter, right?

A Yes. I verified that on July 16. They notified us --

Q Then you testified -- excuse me.

A They notified us they were going to put the so-called work rules into effect on July 18.

Q Yes. Then you testified that there was a 20 per cent wage cut, their new job evaluation program at, I believe under its original form, in its original form, it's original key job classification proposal, it's only disciplinary proposals, it's off standard rates at the 90 per cent, and I believe you said that this was not the proppsals which they had made during the negotiations.

A Are you asking me a question?

Q No, not yet. I've been trying to summarize your testimony,

I draw your attention, Mr. Garber, to the second paragraph of what has been marked Exhibit 43, a letter to the union, to Mr. Hess, with a copy to you.

A Okay.

Q Which says "We are accordingly notifying you that effective as of the start of operations on Thursday, July 18, 1963, the company shall discontinue applying the terms of the expired working agreement and SUB agreement and shall put into effect certain designated terms of employment contained in the company's proposal

as amended to date during negoatiations."

Were you aware of that provision in the accompanying letter?

A I knew the company's letter said that.

Q But it's your opinion that the brief statement of the rules and working conditions was not limited by that statement of what they were putting into effect?

A Was not limited? I don't understand that, sir.

Q Well, they said they were putting into effect changed working conditions based on their proposals as amended in the negotiations to date.

A I didn't believe that to be a factual statement.

Q You didn't believe that to be a factual statement?

A No.

Q Did you ever discuss that with the company?

A Well, I told you, I wasn't in the meeting on July 16 and I didn't receive that letter until sometime later.

Q I see. Do you know whether theother members of the negotiating committee who were there ever discussed with the company the details, the specific

details, of each one of the work rules that were going into effect?

A I don't know.

Q You don't know whether or not the statement in the company's letter was a statement of their intention of how those work rules should be interpreted?

A I don't understand that.

Q The company said that they were posting work rules and then they listed them in rather abbreviated form but their letter said that they were putting into effect the company's proposals as amended in the negotiations to date. You agree that the letter said that. But I'm asking you whether you know whether or not the union ever queried the company as to whether the work rules which were posted were limited by the fact that the company said that the ones they were putting into effect included the amendments made in the neogtiations to date?

A. If you're asking me whether or not the committee discussed this with the company, I don't know.

Q You don't know. It was your impression, at least, I gathered from your testimony yesterday, that the company on July 16 went back in full on all of its original proposals that unilaterally posted them as the

work rules without reference to any amendments which had been made during the negotiations?

A No, I didn't testify to that, Mr. Moss.

THE COURT: That's the impression I got.

A For example, the original proposal was for a 25 per cent wage cut and the so-called work rules they proposed the 20 per cent.

THE COURT: You ~~accepted~~ excepted the 20 per cent, but as to the rest, the impression I got, which may not be the impression you wanted to give, the impression I got was that you thought except for the reduction of from 25 to 20, they went right back to their original proposals?

A I didn't want to give the impression. On individual items I did try to say, like on the job evaluation, that the job evaluation portion of the work rules was the same as the company's original position on the job evaluation.

And one or two other items I tried to point out in that particular case or that particular item, the company's position in the July 16 letter was the same as their original position in the negotiations.

THE COURT: Can I see the July 16 letter? I may have a copy of it up here at the bench.

MR. MOSS: I don't happen to have the work rules. Which exhibit is that? Would you like to see them both?

THE COURT: Yes.

MR. AUERBACH: It's number 43, your Honor?

MR. MOSS: 43 and 44.

THE COURT: 44 is the work rules.

MR. MOSS: Yes, sir.

Q At the end of your testimony yesterday, Mr. Garber, you testified that in your opinion the company posted those work rules for the deliberate purpose of forcing the union out on strike, did you not?

A I don't think I said it in those words but I think I said the company knew that by posting it they would have a strike. I don'tremember the exact words that I used. I have these work rules now that I didn't have before. Had we finished the questioning on those?

As far as I'm concerned.

A Basically, they do represent the company's original position in most cases outside of the 20 per cent instead of the 25.

Q I'm sorry that I can't refer you to the precise thing you said yesterday, Mr. Garber. The transcript doesn't seem, for some reason, to go up all

that far.

THE COURT: It doesn't make any difference. He now says what he means. It ~~doesn't~~ doesn't make any difference what he said before.

Q No, here's what I wanted. Improperly put in the transcript as cross-examination but it was your original testimony.

Mr. Taylor, I believe, asked you "What was your opinion of those work rules?

"A I think the company deliberately didthat in order to force the employees to go out on strike."

Mr. Vasko testified the other day that in a situation, negotiation situation, such as you were in, I believe he testified, I don't mean to misquote him in any way, that there was sort of two things that could be done or three things that could be done --

THE COURT: I think he called them normal.

Q -- normal things that could be done. One was that the union could go out on strike, the other was that the company could lock the employees out, an d the third was that there could be some kind of an agreement to continue to work under the old agreement or some -- I guess he said the old agreement -- pending negotiations.

Now, are you suggesting that by posting these work rules the company was doing something which was in some way heinous or improper?

A Improper from whose standpoint?

Q From a negotiating standpoint. Mr. Vasko indicated that when things come to a certain pass in negotiations the union can strike, if it wants to, and put the employer to the economic test, right?

A Yes.

Q He also suggested --

A I'm not saying yes to what he testified.

THE COURT: You weren't here when he testified so you don't know what he said.

Q The company and the union had been working under an extension of the old agreement from July 1 to July 16, right?

A 16 days, calendar days.

Q And the company had also offered to work under a formalized agreement with the giving of seven days notice by either side of the company's intention to terminate or the union's intention to strike, and the union had rejected it?

A Well, they wouldn't put it in writing but I think the fact they worked from July 1 to the 16th

indicates that the parties did have an oral understanding they would keep on working under the conditions of the old contract.

Q But they didn't have any oral understanding or the union didn't that it had to give seven days of an intention to strike before it could strike, did it?

A I think your statement is correct.

Q So the company had offered a longer extension or a formal extension which you, for reasons which you consider to be good, had rejected, and the company and the union had agreed together to work on a day-to-day basis until either one of them wished to terminate, right?

THE COURT: Hadn't agreed, it just was happening.

MR. MOSS: No, I think they had agreed.

A They verbally said they would do it. They said if the company --

Q In fact the company sent them a telegram and said regardless of your rejection of our offer to enter into an agreement, we are going to open the plant and keep it open on a day-to-day basis under the contract; and the union wrote it back and said sure, that's fine, but we want you to understand we are reserving our right to strike, which you did, didn't you?

THE COURT: What Mr. Moss is saying is, do you agree with Mr. Vasko's testmony that a lock out is a perfectly legitimate bargaining tool just like a strike?

A Yes, if that's what the question is.

Q And the fact that the company posted its work rules and said that they were willing to continue operating on certain conditions on which they would offer work, there's nothing worse about that than locking out, is there?

A I'm not saying --.

THE COURT: He's asking you, as a new proposition, is there anything worse about that than the locking out?

THE WITNESS: I think a lockout is a pretty bad method.

Q We understand that.

THE COURT: You don't like a lock out any better than a company likes a strike.

Q But the impression has been given me, anyway, throughout this trial that the union considers that there was something sort of outrageous about the company offering to continue to provide jobs for the employees on

the terms which it felt were important and necessary for the survival of the company. I'm wanting to know whether you share that impression or whether you agree that this was not a dreadful thing for the company to do.

THE COURT: I think you are making the question too long.

I assume you agree that you don't like a lockout any better than the ~~union~~ Company likes a strike. Mr. Vasko, take my word for it, testified that a strike and a lockout are both normal negotiating weapons, and you agree with that?

A Yes.

THE COURT: Can you see anything worse in posting these things than a lockout? That's your question?

MR. MOSS: Yes, sir.

A No, I think that the union position at the time -- the union felt that the economic relief -- we have gone all through that -- that the economic relief was not justified and wasn't needed and this was a deliberate attempt by the company to do something to them. That was their feeling.

THE COURT: Assuming you are correct, that their purpose in posting these things was to force a

strike, that wis no different than a lockout.

A That's right.

THE COURT: Assuming your premise.

THE WITNESS: Yes.

Q And I only have one more subject I would like to cover with you?

A All right.

Q Is it your testimony that, in your opinion, when the company posted those work rules that it had, by doing that act, exhibited it's already made decision that it would cease operations at the Conshohocken plant?

A I think that would be a fair statement.

Q After that you testified, however, that the union continued to negotiate with the company and you personally participated in those negotiations until sometime in September?

A I think that is correct. September 4 I believe was the last one.

Q At any time in those negotiations did you inform the company that it was the union's position that it had permanently seized operations at the Conshohocken plant?

A We had discussed rumors that were floating

around town the company hadthe plant up for sale and we had heard and discussed with them that there were certain prospective customers examining the plant or looking through it. This type of discussion would be the thing that came closest to the statement you just made.

Q Well, that's not quite the same thing as making the statement to the company that you considered it was the union's position that the company had permanently seized its operations at the plant?

A I don't think we made that statement in those words, no. We did ask questions about whether the plant was for sale or whether the prospective customers were being shown thorugh the plant.

THE COURT: You had no objection to that, I assume?

A Well, we had no control over it.

THE COURT: But quite apart from control, I would assume you would have been glad to have it bought by Goodyear, for example, who would take over your operation?

A I think that is what turned out to be the eventual fact and was beneficial for everybody involved.

Q And there had been problems involved at

Youngstown which had been resolved in precisely that manner in the fall of 1963, right?

A Yes.

Q With a company which continued the operation and took over the union contract, Aeroquip assumed the union contracts and the welfare agreement and all the company's obligations, and the production at the Youngstown plant continued after that strike was settled, right?

A I think that is factual.

Q And the other thing --

A I wasn't involved in that 102 situation.

Q Am I also correct that after the strike, after July 16, no claim was ever made by the union for a special distribution on the discontinuance of operations at the Conshohocken plant until one such claim was made in December 1964?

A I don't know that to be --

Q You didn't make any, did you?

A Correct.

Q And you didn't, I take it, recommend to the local that they make any?

A Sometime later on I got a call and I asked -- I don't know whenthat was -- that was when you notified some of the employees they were being terminated. I

asked the director of pension insurance to look over the letters and to recommend the type of reply that the individual members should make to the company but that was later on.

Q I see. That was in March of 1964.

Let me ask you, Mr. Garber, do you have anything to do either with advising or consulting about charges filed with the NLRB in the negotiations inwhich youparticipate?

A Yes.

Q You do.

Did you have anything to do with the amended charge which was filed with the NLRB in August of 1963 charging the company with a refusal to bargain?

A August of '63. I was involved and did the original typing of a rough draft of the response ofthe union to Mr. McCloskey. I think it was theoriginal charges.

Q You filed some original charges on July 8. I think they were signed by Mr. Hess on July 3?

A Yes.

Q You did the typing for the original ~~client?~~ charge?

A I was involved in the drafting of the original reply to their request from the board.

Q I take it from your testimony that you were also involved in supplying Mr. McCloskey with supporting material to back up the charge?

A Originally, yes.

Q Who was Mr. McCloskey?

A He was an examiner of the National Labor Relations Board.

Q Are you in a position to testify what is the procedure after a union files a refusal to bargain charge with the regional office as to what the regional office then does?

A Yes.

Q What do they do?

A Well, they usually send you a letter asking you to support your charge with certain documentary evidence and you send that in. They eventually get around to meeting with you and discussing with you and making their own on the spot on the scene examination.

Q Did they do that in this case, to your recollection?

A They did make the request for supporting data, letters and documents and insofar as the on the scene investigation, I believe that they did, but I don't think I was there at the time that they were there.

Q Do you have among the papers you brought with you today a copy of the supporting information that you furnished to the NLRB?

A No, I dont.

MR. MOSS: I would ask the plaintiff if they can produce that.

MR. TAYLOR: Not that we know of, your Honor. Not in our files.

MR. MOSS: Mr. Vasko must know. He's the general counsel of the company and he was the signer of the amended complaint. I think he ought to know whether the union is in posession of the supporting material they filed with the NLRB in support of that complaint.

MR. VASKO: If I may, your Honor, that material, of course, was sent to the board. I don't believe it was returned. However, as soon as I get back to the office if we have copies I will supply those copies. In any event, if we don't have copies, the Court will so be notified.

MR. MOSS: I wouldlike the copies which support both the original complaint and the amended complaint, if I may.

THE COURT: I assume the same thing happened with McCloskey or some other character asked for

supporting material and got it.

MR. VASKO: Yes, your Honor.

THE COURT: Mr. Moss is asking for both.

MR. VASKO: Yes, your Honor.

Q Did you participate at all in the composition of the amended complaint to the NLRB which was filed in August after the strike began?

A I don't think so. I don't recall doing so.

MR. MOSS: Your Honor, I'm through except that I understood yesterday that I would have an opportunity to review Mr. Garber's notes since he has been referring to them in connection with his examination.

THE COURT: Didn't you ask for them overnight?

MR. MOSS: No, I ~~dind't~~ didn't, and I would like to know if I could have a few minutes to look at them now.

MR. TAYLOR: Sure.

THE COURT: Is your redirect going to be long?

MR. AUERBACH: I would say about --

MR. TAYLOR: I don't think so, your Honor. Not too long.

MR. AUERBACH: About a half hour.

THE COURT: Then let's have the break now.

MR. MOSS: I'm sorry, I said I would only be a few more and I took about 45 minutes.

THE COURT: About ten minutes.

(Recess)

THE COURT: It does not inspire you to any further questions?

MR. MOSS: No, sir, as a matter of fact. I thought they were pretty good notes. I could read them.

THE WITNESS: I'm surprised at that.

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MR. TAYLOR: On the record, we have no redirect, your Honor, except that we would like to take this opportunity to offer certain additional documents into evidence. These are documents that we received that were in Mr. Garber's possession; also, while he's on the stand, I would just verify that fact.

THE COURT: Have you shown them to Mr. Moss?

MR. TAYLOR: Not yet. But they are the employer's ~~employee's~~ own financial statement, interim reports and so forth. I don't believe they will be objectionable. I do have photostats, your Honor. I have not had time to make sure all of them are new. Most of them are and they are pertinent to the issues.

REDIRECT EXAMINATION

BY MR. TAYLOR:

Q Mr. Garber, is that a document you produced for us upon your arrival?

A Yes, sir, it is.

Q The document the witness is looking at is a proxy statement of the defendant company dated January 19th, 1962.

THE COURT: Make that 106A.

MR. TAYLOR: I believe we are higher than that, your Honor.

THE COURT: 107?

MR. TAYLOR: Forgive me, 106 was the last number.

MR. VASKO: 106A was the last one.

MR. TAYLOR: This is 107A unless there is an objection.

MR. MOSS: I don't object to it.

THE COURT: All right. Received.

(Plaintiffs' Exhibit 107A was received in evidence)

Q Mr. Garber, is that document also one that you brought with you?

A Yes, sir, it is.

MR. TAYLOR: The witness is looking at interim financial statement and letter to stockholders of the defendant company dated March 25, 1963. I offer that in evidence, your Honor, as 108A, if there are no objections.

MR. MOSS: I don't have any objection.

(Plaintiffs' Exhibit 108A was received in evidence)

Q I'm showing the witness a document dated June 1, 1962, and I ask if that's a documentyou brought with you.

A Yes, sir, it is.

Q This is an interim financial report and letter to stockholders of the defendant company dated June 1, 1962. And I offer that, and this is the last one, as 109A, if there are no objections.

THE COURT: No objection?

MR. MOSS: I don't have any objection, your Honor. I'm sort of curious to know these are now being offered, they were apparently received by the International's research department in 1962.

THE COURT: He had them in his possession a long time.

MR. MOSS: Does that mean the International didn't have any?

MR. TAYLOR: It would appear so. We as attorneys don't have them before.

MR. VASKO: If I may, your Honor, I can answer that: We at the International did not have them.

THE WITNESS: I had.

MR.MOSS: You were a real gold mine of notes and files and records and things, weren't you?

THE WITNESS: I have a set of file drawers down in my basement for everything I have ever done

for the union or company.

MR. MOSS: No objection.

MR. TAYLOR: That would be 109A.

(Plaintiffs' Exhibit 109A was received in evidence)

MR. AUERBACH: Just one question I would like to ask Mr. Garber.

REDIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Garber, in your experience on both sides of the labor management fence, have you ever known of a situation where after the termination of an agreement and the continuation of an agreement and the continuation of negotiating where the company unilaterally put in its own proposals -- into effect?

A Yes, sir, I doknow of one case. Carlisle Tire & Rubber Company, Carlisle, Pennsylvania.

Q Was that an increase or decrease or what?

A In that particular situation the company had offered the union a ten cent wage increase and the union did not feel that was adequate and the company subsequently or eventually put the ten-cent wage increase into effect unilaterally.

THE COURT: And what happened?

A Eventually it ended up in a strike but not that moment. It wasn't as a direct result of the increase being placed in effect.

Q You know of any place where the company put a decrease into effect?

THE COURT: Unilaterally?

Q Unilaterally?

A No, I do not.

MR. AUERBACH: Thank you.

THE COURT: I don't really see that's very relevant; he admitted it wouldn't be any worse if it were a lock out.

MR. AUERBACH: Lock out is a tool but it's very unusual.

THE COURT: Yes, sir.

MR. MOSS: I would like to ask a couple more questions if I may.

RECROSS-EXAMINATION

BY MR. MOSS:

Q Mr. Garber, when did you get the documents which have just been put into evidence. Did you receive them as a matter of course from the company around the dates they are dated?

A Are you talking about these financial reports?

Q Yes, sir.

A I had made a recommendation to the International president to buy stock in certain companies that we had dealings with.

Q You got them as a stockholder or International got them as a stockholder?

A Yes, sir, and they were referred down to me because I was interested in the Lee situation and when I left the International union I packed up my files and I thought I had left copies of everything but apparently I didn't. It turns out I didn't because I asked them to check and they didn't have them so I brought along what I had.

Q During the recess you gave me your notes to review; I wonder if you would tell me in the course of taking notes were you taking them as official records, not records in the sense of filing anywhere, but official notations of anything that went on in those meetings but were they just notes you took for your personal recollection?

A I always take notes for myself, in spite of the fact they have somebody else's official function for the company or unions to make a set of minutes. I keep my own set.

Q And, so what do you put in them?

A What I think is pertinent.

Q Would you take a look at your notes of July 11, which I believe are quite extensive?

A Yes, sir.

Q Quite extensive, right.

A I guess that depends upon your definition of the word extensive.

Q Why don't you tell the judge, I don't want to be bothered to offer them in evidence but how many ~~notes~~ pages are there for July 11th?

A Four and a half.

Q I asked you a whole lot of questions about your testimony on what happened at your meeting of July 12th about which you testified at some length, yesterday, I think. Would you take a look and see how long your minutes are for the meeting of July 12?

A They are very short, I can tell you; they are ~~approximately~~ approximately third of a page and one of the reasons for that is the notes showed there was no morning session. It was only a short session.

Q Would you just read into the record what that third of a page says?

A "7/12/63, p.m.," and it notes no morning

session in paren. "Union suggested three year recall rights and three year separation pay eligibility or give company right to negotiate settlement with individuals in connection with separation pay. Company reviewed position;" that's all I have for that day.

Q I see; those notes don't purport to set forth the entire session, right?

A No.

Q Okay; am I also correct, can you tell me from your general knowledge of ~~you~~ your notes which obviously you reviewed before you testified, as to whether or not those notes show any discussion withthe company during the negotiating sessions of the Dunlop situation?

A I think they do make reference to it. You want me to go through them and find out what it says?

Q I would hate to hold up matters. I didn't find any and if there is any reference I sort of would like to see it.

A I haven't come across it yet, but I do know we discussed it because I made a report to the international president with that subject matter in some detail or reported to him.

Q Does that mean you reported to him the fact it had been the subject of discussion in these negotiations or you reported to him some of your views about the Dunlop situation in light of Lee's reliance upon that as a precedent for its own demands.

A When I was first assigned to the Lee situation I came in on the 19th, as you know, and went back to Akron on the 20th and dictated a total report to the International president of the situation as I saw it at that time and in that I made refereence to the company's request and I believe it is to the Dunlop purported situation.

THE COURT: You have that report here?

THE WITNESS: I have it here somewhere. That's a typewritten report.

THE COURT: Maybe Mr. Moss would like to look at that.

MR. MOSS: I never heard of it before but maybe I would.

THE COURT: That's what you get for asking one more question.

(Pause)

THE WITNESS: I don't have that.

MR. MOSS: All right. No other questions.

THE COURT: Thank you,Mr. Garber. I'm sorry you had to stay an extra day but it's just as well we didn't try to finish last night.

THE WITNESS: Thank you, sir.

MR. MOSS: I don't know how it would sit with you but I think it might be, as a practical matter, good to break for lunch now, because I think that in going over the rest of my examination that I had for Mr. Vasko I might well be able to cut it down quite a lot before I begin because many of the subjects which I was going to take up with him I think I may have covered as much as I want to with Mr. Garber; if I could have from now through lunch to go over everything I want to do I might cut down a lot.

THE COURT: No point in spinning wheels. I can't come back any earlier than two o'clock. I have an engagement of my own but --

MR. MOSS: I'm prepared to go ahead now but it will be looking down my ~~notes~~ notes and seeing have I covered this and ~~starting~~ striking out. I thought it might be better to break it off right now.

MR. TAYLOR: That's perfectly fine. I thought I would at this moment add particularly in light of Mr. Moss' remarks, we may as well cover some of our

situation. I take it that the balance of Mr. Moss' cross-examination and probably redirect and recross of Mr. Vasko will conclude today, judging by what he has just said.

THE COURT: I would guess so.

That's a fair guess.

MR. MOSS: That I will be through with Mr. Vasko today?

THE COURT: Yes, sir.

MR. MOSS: I think so, yes, sir.

MR. TAYLOR: I would like to then further request, because of the impending half day tomorrow, and the impending holiday on Monday, and the ~~whether~~ weather in Cleveland, I think -- and forgive me, and some of yesterday the unavailability of one of my attending witnesses for tomorrow altogether because he's leaving this afternoon to an urgent meeting where he is just required to be and he was our next witness, I would like to ask the Court's permission and my adversary's permission to ~~bring in~~ adjourn the trial after today's session and commence Tuesday morning and I will further add that in light of the proceedings I believe that we have three witnesses, your Honor, and I believe that I can, allowing for reasonable time for both

direct and cross-examination, I believe I can estimate we will finish on Wednesday afternoon -- two days, your Honor, whereas tomorrow, to have somebody come in from Cleveland because of the unavailability of this witness and the fact it's a half day it's extremely difficult.

THE COURT: Any objection to that, Mr. Moss?

MR. MOSS: No, sir; I don't know whether all this should be on the record or not and I think it might be better to discuss it off the record.

THE COURT: Fine.

(Discussion off the record)

THE COURT: On the record; we will now adjourn for lunch at the parties' request and resume at two o'clock and then it isunderstood at the plaintiffs' request in the event we finish with Mr. Vasko today we will have no session tomorrow and it's anticipated we will finish Mr. Vasko today; we can go a little longer if necessary. We will have no session tomorrow and then it is understood at the defendant's request when the plaintiff rests his case after hearing argument on motions, etc., the matter will be adjourned until Wednesday --

MR. MOSS: February 21st.

(Luncheon recess)

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Q Did you review the minutes of the November 13 meeting?

A I did.

Q Did you review the minutes of the November 16th meeting?

A I did.

Q You were only at the October 31 meeting, am I right?

A Of those three, yes.

Q Okay. Now, you testified that at the October 31 meeting, Mr. Clairmont had mentioned his prior connection with Reliance Manufacturing Company, Russell Manufacturing Company and ~~Atlast~~ Atlas Plywood?

A That's correct.

Q you were testifying from that from memory, were you not?

A Yes, sir.

Q Despite the fact that the minutes of the October 31 meeting do not show any such reference by Mr. Clairmont?

A You're correct.

Q Although the minutes of the November 16 meeting do?

A I think that's also correct.

Q I see. But it's your recollection that he spoke about his past on both those occasions?

A No --

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THE COURT: He doesn't remember.

Q On the first one, though, right?

A Yes. If I may explain, the reason that Atlast Plywood stuck in our minds is because of the situation that had happened in the Atlast Plywood.

Q That's what causes you to remember that although the Union's minutes don't show any mention of that, that causes you to remember it was mentioned?

A Yes. Atlas Plywood, Mr. Moss, came up throughout these entire negoitations from the beginning to the end.

Q Yes, I understand that you all read a book or something and never could get ~~Atlast~~ Atlas Plywood out of your mind?

A That's correct.

Q Whenever you had an opportunity to talk to Mr. Clairmont, at least on frequent occasions, took the occasion, did you not, to ask him to explain ~~Atlast~~ Atlas Plywood?

A Quite a few times, yes, sir.

Q Everytime he explained it you were never satisfied I take it, and-that's why you brought it up again?

A We were not satisfied with his explanation, right.

Q You testified also, Mr. Vasko, I guess it was the October 31 meeting, that Mr. Clairmont has told you that he was going to get or looking for or something about a new

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person to ~~hold~~ head sales?

A Not so much a new person to head sales; he was dissatisfied with his sales -- I suppose department -- and he was interested in an entire new sales force; yes.

Q And then I believe you testified you went to the April 16, 1963, meeting, and thatyou all asked Mr. Clairmont if he had done anything about sales or did you ask him if he had done anything about a new sales manager?

A No. I think we asked him at the April 16th meeting whether or not he was successful in reorganizing his sales force.

Q I believe you said he said, "No"?

A I believe that's correct.

Q Now, was it your deduction from that or did you intend to convey the impression that the fact that Mr. Clairmont had not been able to reorganize his sales force by that date was an indication that he was not seriously trying to settle the sales problem of the Company?

A Not at all.

Q It wasn't?

A No. I did not deduce anything from that except the fact that he wasn't successful in garnering a new sales force.

Q Did Mr. Clairmont at the April 16 meeting tell you

Q Mr. Vasko, just try and settle this point anyway: I show you what has been marked as Document 45A which purports to be a letter to Mr Conway from Kenneth Oldham dated September 9, 1963, inquiring about some information concerning the Pension plans; a letter of 1964, February 11, 1964, from Mr. Oldham to Mr. Conway, with a copy to you, making certain statements as to the amounts of payments which had been made to the ~~pensioners from 1963 to payment~~ pensioners in 1963 as well as payments to the Company's trust fund; a letter of February 21, 1964, to Mr. Oldham from Mr. Shick of the Company, enclosing a letter from the actuary setting forth various figures with respect to the pension fund.

I wonder, looking at them, you can testify whether or not in toto those papers don't indicate that there had been a 1962 and a 1963 payment into the pension fund?

A The letters indicate there was a 1962 and 1963 payment, yes.

Q All right.

THE COURT: Those are Union letters, I take it?

THE WITNESS: Yes, your Honor. Union-Company.

THE COURT: The letters were from the Union, as I heard Mr. Moss?

MR.MOSS: They were letters from the Union which contained some figures about what information they had

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dictate, is it?

A. Oh, true; he does not have the unilateral right to change the rate and make it stand. However, he has the unilateral right to go in under the conditions in 807, to time study a rate and establish a new rate, yes.

Q. Now, let's pause for a minute over your testimony about the sixty-day notice. I don't want to belabor the point much but in response to a question from your counsel, you were asked whether in your experience, I believe, you had ever known a company before that gave a sixty-day notice to terminate a contract and renegotiate it. Wasn't that your testimony?

A. Yes.

Q. But isn't it a fact that the company had to give a sixty-day notice, if it wished to be certain of having an opportunity to renegotiate that contract?

A. If it had to absolutely be certain of that, that's correct.

Q. Otherwise, it would have to rely upon the fact you would give a sixty-day notice?

A. Right. The company, if they did not submit the notice, ran the risk that maybe the local might not give one either.

Q. And then nobody could negotiate the contract either

up or down, right, according to its terms?

A. According to its terms they cannot. It would renew itself for another year, that's correct.

Q. Now, I believe his Honor pointed out, I also think it came somehow at least into the testimony, ordinarily, the union wishes to reopen an agreement in pursuance of its aspirations of upward and onward, right?

A. 99.9% of the time, yes.

THE COURT: This is only in the period of a rising economy, I imagine. In the period of a declining economy it might be different.

THE WITNESS: It might be, your Honor, but during my history it has been a rising economy, yes.

BY MR. MOSS:

Q. They always want to reopen it in order to do better?

A. Yes.

Q. In general, I take it , in the period in which you have had experience in this matter the employer is lucky if he can keep things standing the way they were?

A. Well, I would say he would be more than lucky. Generally, when that agreement is reopened, the union usually winds up with more in benefits, more in working conditions, and more in fringes, yes.

Q So in your experience it would be perfectly natural over the years of your experience for an employer not to give a sixty-day notice?

A Yes, yes.

THE COURT: He just hopes they ~~wouldn't~~ would forget?

THE WITNESS: Right, that's true.

Q You were aware before there came even an opportunity to give the sixty-day notice in this case that the company was claiming at least to be in difficult financial straits and was asking for relief from some of the provisions of its then current agreement?

A Yes, we were much aware; as a matter of fact, I would have speculated at that time that we were going to receive a sixty day notice from the employer.

Q So there really isn't very much relevance to the facts of this case to the fact that this was the first time you had ever seen an employer give a sixty-day notice?

A I suppose that question should be left for the Judge.

Q Well, I am not so sure.

THE COURT: He wants your opinion.

Q I want your opinion. The fact that your counsel wishes you to testify or asked you the question whether or not you had ~~ever~~ ever seen this thing before and your statement,

"No, in your experience you never had, really doesn't have very much relevance to this case, does it?

MR. AUERBACH: Your Honor, I would like to object as to form. The reason why a question is asked or information is sought to be elicited seems to me is the province of counsel.

THE COURT: But this is general counsel to the corporation, to the plaintiff; it seems to me if he opens up the door to ask general counsel his views he's entitled to then; they are not binding on me whatever they are.

A. In answer to the question, yes, I think it is most relevant because this is what we thought was going to happen.

THE COURT: Why does that make it relevant?

THE WITNESS: I think to the cause it makes it relevant, your Honor, because it supports our theory.

THE COURT: I'm interested to see why.

THE WITNESS: The employer was not taking any chance at all; in other words, he wanted to make sure that the agreement was going to terminate and he also wanted to make sure the welfare agreement was going to terminate because he submitted the notice to terminate.

THE COURT: That's clear but how does it support your theory?

THE WITNESS: Well, if he was going to take a gamble

and a chance that the Union would do it he may have run the risk that the Union never did and that the agreements themselves would have --

THE COURT: Well, it establishes he wanted to cancel the agreement; that's clear; the fact he sent the notice establishes that without any comment, but how is it relevant in the theory of this case that he intended to close down the shop permanently on the day the strike started?

THE WITNESS: He had to do two things, your Honor. First he had to terminate the C.B. agreement and then he had to exercise his right under the welfare agreement in 1964 in order to terminate the provisions of the welfare agreement, because if he did not do that, that agreement would have continued into 1966.

THE COURT: I can understand all that but how does that establish when the union went on strike that constituted the employer's act of closing the shop forever?

THE WITNESS: But see, if he did not do that, your Honor, there would have been no way for him to escape the liability under special distribution clause unless and until he waited until its termination date in 1966.

THE COURT: I see. It's relevant only that it was --

MR. AUERBACH: He couldn't cause a strike, your Honor, if the agreement went on.

MR. MOSS: The only question I asked the witness --

A You asked for ~~my~~ the relevance.

Q I asked the question why it was relevant you had never seen such a notice before; that really had no relevance at all. Its unusualness was because of the circumstances, wasn't it?

A Yes.

Q Yes, okay. On page 510 of your testimony you said that in analyzing each of the working rules that wages of course would approximate, I think you said, a sixty cent cut in wages based on an average hourly rate of two dollars and eighty-five cents an hour?

A That's what I said.

Q Am I not correct that Mr. Hess testified that the hourly rate was three dollars, average hourly rate was three dollars an hour?

A If Mr. Hess said that, then that's the testimony. I wasn't here at the time.

Q Doesn't the Strong-~~Narovich~~ Narovec report show the average hourly wage varied inthe period of the report from three dollars and seventeen cents an hour to two dollars and ninety-one cents an hour?

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page of a memorandum of law.

THE COURT: The memorandum of law onlypurports to relate to state in memorandum form the facts that are in evidence.

MR. MOSS: Yes, sir.

THE COURT: I don't think that adds anything. Excluded.

MR. MOSS: I would respectfully urge your Honor that it is a statement made by the authorized attorneys of the plaintiff in this matter.

THE COURT: It doesn't purport to do anything except state what has already been in 75, and I don't think that that is --

MR. MOSS: I take it you would make the same ruling as to the transcript of the testimony of the plaintiff's attorney in that case to the same effect.

THE COURT: Under oath?

MR. MOSS: No, sir, it was the proceedings in the courtroom when the trial opened.

THE COURT: No. I would make the same ruling.

MR. AUERBACH: That is 76, your Honor.

MR. MOSS: That is 76.

Q Mr. Vasko, with respect to your testimony that as to the termination date -- different termination dates for

the welfare agreement and the working agreement -- you testified that the union or unions in general customarily try to do this so that you could strike without the termination of the welfare agreement?

A Right.

Q And it would give the maximum protection to the employees and leave the company the minimum protection of having to provide various benefits under the welfare agreement even though the employees were free to strike?

A True.

Q While that may be favorable, and something the labor union and its members would find desireable, it is obvious that an employer would seek for just the opposite reasons to have the termination dates be the same?

A Except we have accomplished that purpose as of this time. In most of our agreements they have "termination dates."

THE COURT: Mr. Moss is really stating the obvious question, that just for the exact same reason it is favorable to the union it is unfavorable to the employer. What you are saying is you have been successful.

THE WITNESS: Yes. I would like to explain what has happened now. What has happened, your Honor, is this: Now the agreements in basic industry have the same date.

However, we have negotiated what we consider a 90-day umbrella clause to provide that in the event the agreements are terminated, all those benefits survive during a period of 90 days if there is the termination of those agreements, so we have accomplished it in another manner now than we had at that time.

THE COURT: The strike is limited to 90 days.

THE WITNESS: The benefits are limited to 90 days, yes, your Honor.

THE COURT: So after 90 days the union has to quit striking on peril of losing its benefits.

THE WITNESS: No, no. Even after the 90 days they don't have to quit striking, but they would lose their benefits.

THE COURT: I don't mean they have to quit, but if they don't quit they lose their benefits.

THE WITNESS: Even if they quit striking after 90 days, your Honor, they run the possibility that they would lose these benefits unless and until they reached a new agreement.

THE COURT: Oh, I see.

Q So the sum total of your testimony now is that in 1963 you had a welfare agreement which survives the ending of the working agreement bytthree years?

A Had a termination, a final termination date.

Q Of three years later than the working agreement which eventually expired on July 16, 1963, when the extensions ran out, the working agreement?

A Yes, that's correct.

Q And the company in the negotiations and prior thereto, in the earliest talks that you had with Clairmont, had been wanting to get a co-terminus termination of both agreements?

A That's what they wanted.

Q What you have said now is that since that time in most of your contracts you have negotiated this arrangement which you were just speaking to the Court about?

A That's correct.

Q So that you now have come within three months of co-termination in many of your agreements?

A No. As a matter of fact, we have arrived at co-termination.

THE COURT: For present purposes there's a three months' difference. For the purpose --

Q It is co-termination, but the benefits survive for three months; is that correct?

A That's correct, sir.

THE COURT: So within the context that you are

discussing back in '63, what it boils down to is a three month later termination. In other words, they've got three months free strike time is what I would call it.

THE WITNESS: Three months ' benefits under the welfare agreement.

THE COURT: While they're striking.

THE WITNESS: Right.

THE COURT: Instead of three years, or whatever.

THE WITNESS: Whatever it might have been, yes, your Honor.

THE COURT: Whatever it might have been.

Of course, the other was qualified by the company's right to terminate the welfare agreement at whatever time.

THE WITNESS: In this particular instances, yes.

Q You testified on direct examination about the conclusion of the problems in Youngstown at Republic Divison.

A That's correct.

Q I understood you to testify that some time between the strike in Youngstown and the conclusion of the affairs in Youngstown on December 20, 1963, that the company had discussed with the union during negotiations the fact that it would like to sell the plant, right?

A Yes.

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THE COURT: Are you going to leave time for redirect?

MR. MOSS: I guess so, if they will have any.

BY MR. MOSS:

Q Mr. Vasko, we were talking with Mr. Garber this morning about the fact that the National Labor Relations Board sends as a normal practice an investigator around to seek support, for Union supporters; you agree with that?

A Sure.

Q I believe that Mr. Garber testified that a Mr. Maclasky had come around to seek support of the NLRB refusal to bargain a charge which the Union filed in July of 1963?

A I think it was Mr. Maclasky, yes.

Q Did Mr. Maclasky come and seek support of you of that charge?

A He did not.

Q Did he come and seek support of you of the amended charge?

A No.

Q Did you supply additional information in support of it in writing to the NLRB at its request?

A I can't quite recall whether I did, Mr. Moss. I had indicated this morning that I will check my files and I

will send to the Court all the information I have in that respect. I haven't reviewed that, at least for a period of ten years, I suppose.

Q Are you familiar with NLRB statements of procedure which are part of the Federal Code of Regulations, Title 29, Part 101?

A Am I familiar with the NLRB Rules of Procedure? Yes I am.

Q These are called "Statements of Procedure".

A I don't know.

THE COURT: Show them to the witness and see if that's what he things are the Rules.

Q I show you a xerox copy of what's to be the National Labor Relations Board Statements of Procedure effective November 15th, 1959, as last amended, and ask you if you are familiar with those?

A Yes, I am.

THE COURT: Are they what you call the Rules?

THE ~~WITNESS~~ WITNESS: Yes, they would be what I described as the Rules, your Honor.

MR. MOSS: Well, they aren't really the Rules, your Honor; I have something else entitled, "Rules and Regulations". These are called "Statements of Procedure", and I would like to offer them in evidence with respect to

benefits applicable under the various contracts?

A In order to get at what total labor compensation is, on an hourly basis, you would have to add in the cost of fringe benefits items contractually and legally required.

MR. MOSS: I have no further questions.

THE COURT: Thank you, Mr. Fisher.

MR. AUERBACH: Plaintiffs rest, your Honor.

t2PM THE COURT: Off the record.

THE COURT: We will meet at ten o'clock on Wednesday, February 21, 1973.

MR. MOSS: I would like to have the record show I am submitting to you, with a copy to plaintiffs, the promised ~~promising~~ memorandum we have on the subject of the procedures of the NLRB.

THE COURT: All right.

MR. TAYLOR: Your Honor, may we go off the record?

(Discussion off the record.)

THE COURT: The plaintiff has rested and why don't we say briefs on Friday, argument on Monday.

MR. MOSS: A week from this Friday?

THE COURT: Briefs a week from the day after tomorrow, argument a week from Monday.

MR. AUERBACH: Your Honor, the plaintiffs would like permission to withdraw the statement that the plaintiffs have rested and call Maurice Clairmont as a witness, and ask the defendants to produce him.

MR. MOSS: He is not under my control, your Honor. He is not working for ~~the~~ Lee National. He is a very difficult man and I don't feel that I have any obligation to produce him as a witness for the plaintiffs.

MR. AUERBACH: If Mr. Moss will tell us where he is, we will be glad to subpoena him.

MR. MOSS: As far as I know he is in New York.

THE COURT: Do you know where he is?

MR. MOSS: He is in New York, as far as I know, your Honor.

THE COURT: Do you plan to communicate with him?

MR. MOSS: I did, last week.

THE COURT: You can't make him available but you can tell what you know about his whereabouts.

MR. MOSS: He is in New York. He has an office in New York, he is in the telephone book.

MR. TAYLOR: Maurice Clairmont?

MR. MOSS: Yes.

MR. AUERBACH: If Mr. Moss will tell us where and how he communicates with him, we will do the same.

MR. MOSS: At his office, 575 Madison Avenue. I'm not sure.

MR. TAYLOR: The fact that Mr. Moss has no control over Mr. Clairmont, your Honor, is quite irrelevant to the fact that he represents the company. Mr. Clairmont is the chief protagonist in the matter, he is the chairman of the board.

THE COURT: If Mr. Clairmont no longer works for the company and Mr. Moss can't produce him --

MR. AUERBACH: What is his telephone number?

MR. MOSS: I don't know. My secretary knows.

THE COURT: Would you communicate with your secretary and give Mr. Auerbach whatever telephone number she tells you she calls him on?

MR. MOSS: Surely. I will give him the office number.

THE COURT: That being the case, we might as well reconvene on Tuesday, ~~if~~ if you are going to call him. I mean Wednesday.

MR. TAYLOR: Yes, your Honor.

THE COURT: If you are not resting, there is no point --

MR. TAYLOR: We will reconvene calling Maurice Clairmont as our next witness.

In the alternative, we are going to call Mr. Heinrich, your Honor, and he was in attendance in this trial until recently. I don't know if he is in California or not.

THE COURT: Can you produce Mr. Heinrich?

MR. MOSS: Yes, I can produce him. He has some kind of arrangement with Lee, I believe, that he will be available for the trial, so I think he probably is under our ability to produce. Mr. Clairmont is not.

THE COURT: I gather Mr. Clairmont does not take

UNITED RUBBER

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LEE NATIONAL

New York, New York,
February 21, 1973 - 10 AM

(Trial Resumed.)

MR. TAYLOR: Plaintiffs call Maurice Clairmont.

M A U R I C E M. C L A I R M O N T, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: Mr. Clairmont, you are living in the blessings of revived architecture and we have arranged the questioning desk in such a way that it makes it difficult for you to talk to the Court.

THE WITNESS: Well, we have a swivel chair.

THE COURT: Try to answer the question in my general direction so I can hear you. It is natural for you to go the other way.

MR. AUERBACH: Your Honor, Mr. Taylor will be questioning the witness; but, at the outset, we are going on the assumption or we are requesting your Honor to hold, at the outset -- I think the Rule is 43(b), I am not sure, that or permits a hostile witness to be cross examined. In view

of the testimony in the case and all that has gone before, I would assume there is no question but that we have a right to treat him as a hostile witness without first developing it through new questioning.

THE COURT: I do not like the word "hostile."

MR. AUERBACH: That is a technical word.

THE COURT: It seems obvious from Mr. Clairmont's -- although I am told he has no interest in the outcome of the litigation- financial interest -- it is obvious that he has an emotional commitment, I would say, to the defendant's point of view.

Proceed as though you were cross examining.

MR. MOSS: Your Honor, I object to any finding on this record or any other record that shows Mr. Clairmont is a hostile witness.

THE COURT: That is what I said.

MR. MOSS: He has not even testified yet. He has no interest in the proceeding; he is not a party to the proceeding; he suffers no liability as a result of the proceeding. I think he ought to be treated as an ordinary witness until there seems to be some reason for treating him in some other way.

THE COURT: We are only discussing or making a lot of argument and it does not mean much. I think it is

perfectly obvious that the accusations the plaintiffs are making accuse Mr. Clairmont of acting inimitably to their interests. As a human being he would be expected to respond to those accusations, and the Court will proceed accordingly.

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DIRECT EXAMINATION

BY MR. TAYLOR:

Q Mr. Clairmont, when did you first become affiliated with the defendant Lee National Corporation?

A I became probably, I think, in June or July of 1962 when I became a director of the company.

Q And had you become a stockholder of the company prior to June or July, 1962?

A Yes, I did.

Q How long ago did you first become a stockholder of the defendant?

A It must have been three or four years ~~ago~~ before 1962--'62, I think.

Q About 1958 or thereabouts?

A I was a stockholder for at least three or four years prior to that.

Q And would you consider that you had a substantial stockholding at that time?

A At the beginning, no. Maybe five to 10,000 shares, or something like that.

And then I became a larger stockholder, I would say towards the end of '61 or the beginning of '62.

Q Was this an investment of your own funds?

A Yes.

Q And did you make a substantial investment with other people, in concert with others?

A No. At the beginning, only myself.

Subsequently other friends of ~~mine~~ mine made also investments.

Q And you became a member of the Board of Directors in June or July, 1962?

A Yes.

Q Subsequent to that you became chairman, I believe?

A That's right.

Q When was that?

A That's right.

Q When was that?

A I think in September of '62.

Q At about this time you acquired what are known or what is known as working control of Lee, now known as Lee National?

A Yes.

Q When did that happen?

A It was not that I obtained but I, together with other large stockholders who were sort of supporting my views, had what you would call working control.

It was between 20 and 25%, probably, of the total stockholdings.

Q Of the floating common stock of the company?

A Yes.

Q Could you place a time for us, please, about when this happened?

A In the beginning of '61 or--

Q Was it early 1962?

A I could not tell you exactly the date. It was some time between January of '62 and the time I became chairman.

THE COURT: When did you become chairman?

THE WITNESS: In September of '62.

Q You were elected chairman at a meeting of the Board of Directors?

A That's right.

Q Was there also a stockholders' meeting held at that time?

A No.

Q You purchased, I believe--I would like to ask you if you purchased the security interest of the--or the ownership interest of Mr. Garthwaite or an ypart of the Garthwaite family?

A No.

Q You acquired your interest by open purchases on the market?

A Yes, under some sort of advice and being asked by Mr. Garthwaite to do so.

Q You were asked by Mr. Garthwaite to acquire an ownership interest in the company?

A Yes. He encouraged me to buy into the company because he was afraid of other people who also at that time had acquired stock whose identity he suspected but did not know.

THE COURT: Did he say that it was in anticipation of a proxy fight?

THE WITNESS: Mr. Garthwaite encouraged me. He had known me before as a smaller stockholder because I always used to -- he used to send -- I always used to send my proxies to the company, so he came and visited me once or twice a couple of years earlier.

Once a year he would pay me a visit at my office and shake my hand and thank me for my proxies, and so forth, as a matter of public relations, and when he felt that he was threatened by other ~~people~~ people with the control of the company, he probably had a favorable impression of me, or whatever, and he thought of me, and he encouraged me to buy into the company.

I suggested to Mr. Garthwaite why doesn't he buy more into the company because I knew he was a man of

certain wealth, so he declined.

He told me he is already committed, all of his funds are committed in other investments and he can not buy, but he encouraged me to buy. He knew of all my purchases in the market.

(Continued on next page.)

Q The Judge asked,but I am not sure that I understood your answer clearly, whether Mr. Garthwaite was anticipating a proxy fight in the Summer of 1962.

A Not from us, but he was afraid of other people who were accumulating stock during that time.

Q Do you know who those people were?

A No. There were some people from Canada. That is what he told me, as a matter of fact. Some people that he sort of had been able to trace as being purchasers from Canada, and he suspected that another of his directors , Mr. Kahn, may have been allied or somehow tied up with that group.

Q That would be Mr. Herman Kahn?

A Yes.

Q You had obtained a sufficient stock interest so that Mr. Garthwaite invited you to become a member of the board of directors in about June or July of 1962?

A That's right.

Q Can you tell us what your occupation was at the time you became a director of the company in June or July of that year?

A I was in the investment business managing my own investments.

Q You were in your own private business, you weren't

affiliated with another company at that time?

A No, I was not, except my own private companies. I had about two or three companies owned by me and members of my family.

Q Did you engage commencing in about June of 1962 to devote your full time to the interests of Lee National?

A After I became chairman, yes.

Q From September on?

A Yes.

Q But --

THE COURT: You became cheif executive officer as chairman.

THE WITNESS: I beg your pardon?

THE COURT: Were you chief executive afficer as chairman of the board?

THE WITNESS: Yes. I became chief executive officer just as Mr. Garthwaite had been before chief executive officer.

Q Had Mr. Garthwaite known you from any of your previous business activities?

A Yes, he knew.

Q Can you tell us a little about your background prior to your becoming involved with Lee National?

A How far do you want me to go?

Q I must say that there has been a fair amount of

testimony in this case concerning the various meetings that you had, which we are going to get into, in 1962 with the United Rubber Workers in which you were involved in stating your background and experience in coming into this particular company, and I would first like to ask the specific question, had you had any previous experience in either tire manufacturing or industrial rubber goods?

A No.

Q Could I ask you how you came to have an interest -- apart from being invited by Mr. Garthwaite, how you came to have an interest in putting in a major investment into a rubber goods company or tire manufacturing company?

A I had been accustomed to make very major investments in all kinds of companies, some of which I eventually controlled when things went bad, some of which I did not have to come to control because I sold out my interest, that the management was good and I did not have to come into control of the company.

Q Being a man of financial expertise, you undoubtedly made a survey or investigaged the prospects of Lee National, did you?

A I surely did.

Q Prior to making a substantial investment?

A I did.

Q Can you tell us what your opinion and findings were in this company at that time?

A Yes. I first looked at the industry. I knew that Lee did not compare itself with the so-called Big 5, because they were in a class apart by themselves. I mean Goodyear, Firestone, General Tire, Goodrich, and U. S. Rubber. But we could compare ourselves with those that are in the minor league, to say, which were Mohawk Rubber, Cooper Rubber & Tire, Mansfield, which were ~~not~~ more or less the small ones of the industry.

I could see that for the last four or five years prior all of these people had made constant progress both in sales and earnings, that it was an industry in which somebody could make money.

Q Pardon me. It was or was not an industry?

A It was an ~~industyr~~ industry in which one could make money.

Q I see.

A However, I was fully aware that Lee Rubber & Tire situation was completely different from its competitors. In other words, instead of going ahead in profits and sales it was going down, and I was trying to find out why from Mr. Garthwaite.

I knew that the Garthwaite family represented not I would say poor management but practically no management.

The Garthwaite family had dominated for the last approximately fifty years, since Mr. Garthwaite was a young man. At the time he resigned he was 73. And he was Mr. Lee. He was even called Mr. Lee, because he was dominating fully the whole company. The board of directors was practically non-existent. They were either employees of the company or old-time friends of Mr. Garthwaite. There was no such a thing as an independent larger stockholder represented on the board or anything of the kind.

Mr. Garthwaite himself had very little stock in the company, I would say maybe one to one and a half per cent of the stock of the company in his holdings. Either he had sold them in the meantime or didn't originally have it, but he had a very small investment in the company.

All the management team were only old friends of Mr. Garthwaite. The manufacturing man had just retired about a year ago before I came due to he was over 65. The head of the sales, Mr. ~~Hindersheit~~ Henderscheid, was well in his sixties, also an old friend of Mr. Garthwaite.

I first inquired about the plant, the machinery, to find out, do we have an outmoded plant, and that may be one of the reasons for their poor performance, that they are not modernized. I have been shown the company spent about five to six million dollars within the past couple of years

and had almost 80 per cent modernized both by putting in brand new equipment and also by streamlining the manufacturing processes, and so forth.

I ~~visited~~ visited the plant, I looked into that, and because I have a long career of manufacturing, I am not a financier, as you said before, all my experience and all my life I have been, my family, and grandfather, have been manufacturers. In another field, not in rubber, but we have been, and all my experience since I have been in business has been only in manufacturing companies.

THE COURT: What field of manufacturing?

THE WITNESS: My family for three generations back as I know have been in the textile manufacturing field, spinning, weaving, finishing, and that's what I started in ~~the~~ this country, in the same business in which I practically had been raised, and owned several plants in the south, in South Carolina and North Carolina, textile plants.

Then all the other investments I had were only in manufacturing companies, so I acquired a general business ~~exerpience~~ experience. I started to be head of an enterprise at the age of 22, I was already head of our family business, and then I continued to be always in the chief executive position so I acquired a general experience about manufacturing which is the same in a general way whether applied to tires or to plywood or to garments or to automotive parts. It is what you would call the same ten commandments of running a business.

And then the specific things you have to know about a certain industry you either learn or you are assisted by men that know the specifics of that industry. But the general ways of running a business are the same.

It seemed to me the plant was in good shape. I looked through it, I visited it several times, I was given all kinds of explanations, so I could see by comparison

with our real competitors, which was what I called the minor league of the tire manufacturing, we were looking pretty good.

The finances of the company were very good, because that is one of the major things you look at. There was no debt outstanding,long-term debt. Generally speaking, the balance sheet was a sound balance sheet.

I looked at the basic ingredients of what makes a company go, what are the tools by which you can make it go. I inquired about the labor situation, and Mr. Garthwaite said, "We have the best labor situation in the industry. There is not one rubber company at one time or another, almost every couple of years have a strike. We never had one." And it was true.

I unfortunately later discovered that the reason they never had a strike was because they always gave in to everything that labor wanted. But on the face of it it appeared that the labor situation was fine. Never strikes, never troubles.

I inquired about the quality of the product. It seemed to be a good accepted tire. So it seemed to me that all the basic tools to make a go of the company were there.

I drew the conclusion that the only reason why

this company is going downhill and starting to lose money, because it was already losing money at that time, is because there was no management. This thing was confirmed to me by my contacts with Mr. Garthwaite and the management which became more frequent as I accumulated more stock. I saw Mr. Garthwaite in the first place was very rarely there. Any time I called him at the plant he was away, as he was a member of the Gillette Company board, the Universal Pictures, all kinds.

I knew he has no financial interest to speak of in the company, I knew he was ready to retire because he had announced at the previous meeting had the company not turned around in 1962 he was going to withdraw anyhow, and meeting the other people of the management I could see there was nobody really interested, everybody was coasting along, and that was the general information and feeling throughout the industry because I tried to check that. It was a company just coasting along without doing any of the things that have to be done in order to progress.

So I thought to myself, well, if you are going to inject proper management to do what the doctor says with this company there is no reason we shouldn't do the same thing what our competition was doing, especially I was accustomed to either reorganize or to take a bad situation

and change it around, some of them even worse than Lee, and succeeded eventually to turn them around. So I had enough confidence that being given the tools on hand over a period of years, a couple of years, I will be able to slowly bring Lee where it belonged, because I looked at about seven or eight years ago Lee was the leader or the best company of the minor ones, and while the others went up Lee went down, so I said it is a question of management. That I was not afraid of because I had enough confidence in my management experience to be able to slowly and gradually bring it up.

What I did not, however, count on was the resistance of the union to all my attempts to try to put this company in line with our competitors. The first thing I did when I became chairman, I recognized I had to build up a management team, a man for sales, a man for manufacturing, treasurer, and so forth.

I made the necessary changes. I changed the treasurer because the one previously was a man that had been promoted by Mr. Garthwaite that had absolutely no financial exeprience but he was the son of an old friend of his who has been also in the plant for a long time.

I tried to hire new people. I found it very difficult to do so because when I tried to hire people for

sales, which was one of the major problems of the company, they had no sales, and I showed them our operation they practically laughed in my face and said, "Mr.Clairmont, if this is your cost we can sell you tires cheaper than you are producing them. We cannot come and promise you any results unless your costs will be less."

That's how I became aware of the costs, because I was interviewing other people I wanted to hire for Lee. When they were exposed to the facts and what we had to sell versus what they were selling, they said, "That is an impossible situation. We cannot do you any good."

That is how I first became cognizant of the fact that our production costs were completely out of order and out of line with the rest of the industry.

The thing became even more evident to me when I could see that our cost accounting was practically non-existent, or it was so poor that nobody knew what the real cost was. So I tried to hire cost accountants from other companies, and I was trying to hire them from the more competitive and the more successful ones. I approached people from Cooper, Mohawk, which were the companies that were smaller than Lee a couple of years ago and in the meantime overtook Lee, and I succeeded finally to induce by paying them much more money the cost accountant from

Cooper Rubber & Tire Company to come with us, and he brought me the whole list of costs, every particular operation, not only the general cost but broken down by operation by every sequence of operation in the plant.

When we saw that, that was really when my eyes became open.

THE COURT: What was the date you got this fellow?

THE WITNESS: Sometime, I would say, between the time I became chairman -- probably within the next four, five months. I don't remember the date. After I became chairman. And then he went to work, also, for our other division in Republic. I forgot his name.

MR. MOSS: Paul Drexler.

THE WITNESS: Yes, Paul Drexler.

That was my eye-opener. I saw our cost of manufacturing, without overhead, was 15 or 16 cents a pound versus 7 to 8 cents for Cooper, not to speak of the big ones which had probably a much cheaper cost because of their large volume, but taking and comparing ~~likes~~ likes with likes.

I found the same difficulty in hiring manufacturing people, because we didn't have any. The former manufacturing man had retired because of old age. They had

hired another man, but nobody that had any real background. I finally, again after interviewing many people, succeeded in hiring Mr. Barkett as head of manufacturing. Mr. Barkett has been previously head of manufacturing at one of Goodrich's plants, and when we hired him he was with Mansfield Rubber & Tire.

He didn't have any children and one of the reasons he accepted was because he was living in a small community in the south at one of Mansfield's plants, and he preferred to live in Philadelphia. His wife was discontented with living in that small community, which name I don't remember. It was somewhere in the south. And also because of the much better pay and conditions that we offered him to induce him to come with us.

When Mr. Barkett came, who had long experience, he was a man I think in the late forties or very early fifties with thirty years of experience in manufacturing in competitive plants, he confirmed the same thing, that Mansfield also had about 7 or 8 cents labor per pound of rubber converted into tires, and ours was double.

Then he looked at the whole plant and the labor situation and he told me what's wrong. He says, "Mr. Clairmont, you have here in the plant a lot of jobs that are paid still on an hourly basis that most other people have

on a rate basis, on production."

THE COURT: Incentive basis?

THE WITNESS: Incentive basis. In other words, based on production. In other words, instead of a man being paid $3 an hour no matter what he produces, he is paid on production so he has to earn his $3.

I tried, also, to find out how this situation came about, that we were so out of line with other manufacturers both as to evaluation of jobs -- some jobs that were less responsible or required less skill were paid higher wages or earnings than others that were more skilled. There was no rhyme or reason. It was a completely haphazard situation by comparing jobs between themselves and the respective pays.

Also, the fact was that many jobs that normally in all other companies were on a rate basis were paid on an hourly basis. The man didn't care how much he produces or how much he delivers, he had the same, which only encouraged them to take things very easy; whether they were in the washroom half an hour smoking sigarets or chatting or taking things easy, they got the same pay.

I tried to find out what has brought up this situation, and talked to Mr. Conway, who was at that time the man in charge of labor relations, if you want to call it.

He told me there have been attempts to change the situation. Occasionally, engineers have been hired but all the recommendations were never put into effect because the union had been accustomed that the company always gave in, and that's the reason it was the only company in the industry that never had a strike, because when labor said that's the way they want it Mr. Garthwaite said, "I don't want any trouble here."

That was the sort of law around, "Give them what they want; I don't want any trouble."

Mr. Garthwaite knew he was not going to be much longer there. He didn't want to be disturbed in the status quo and the comfortable way they were living. It was a very clubby atmosphere, very clannish. They were living like in an ivory tower, completely isolated from what was happening in the industry. Very smug, very complacent, that was the general attitude. And Mr. Garthwaite didn't want anything that inthe slightest smelled of trouble.

I talked to the other people in the plant, and that was confirmed to me. They told me we had the war, then we had the postwar period which was a bonanza for anybody that had any kind of goods to be sold until the pipelines were filled. Then when things became a little lower Korea

came, the war in Korea, that gave a shot in the arm. And then immediately a year after things were good.

When '53 came around and all of these external circumstances that helped the industry disappeared and you really had to separate the men from the boys, the company started to go downhill while all the other people started to put their house in order with incentives, job evaluations, what everybody was doing in order to get an honest day's work for an honest day's pay. The company didn't do one thing.

They were also known to be belatedly doing what the rest of the industry did. When everybody came up with two ply instead of four ply they were two years late. When everybody modernized and put new equipment they did it always later, sort of following the others and not being ever in line with what was happening in the industry because they were old people coasting along waiting for their retirement. There was nobody else but Mr. Garthwaite. He never built a team under him.

And labor was accustomed to get what they wanted. They were actually running the plant. If I may compare the situation with one of spoiled children, they became spoiled brats; they always got what they wanted. And now when the opportunity came that you have to do something for

they said, "What's that? We never heard of that."

That's the situation I was confronted with when I started to talk to labor about the situation in the plant. I could see from the beginning there was very much resistance and a tremendous aura of ~~suspiction~~ suspicion in connection with my coming into the company. They had known only one family all their lives, Mr. Garthwaite. Mr. Garthwaite was a very nice fellow, always gave them what they wanted without any discussion. What the Big 4 did they did.

I started in the meantime -- I realized that changes will have to come. I didn't want to ask for outlandish things, for things that I knew would not be acceptable, so we made a study of all the labor contracts that our competition had -- Mohawk Rubber, Cooper Rubber & Tire -- to see what do they have in their contracts that we don't have, or vice versa, so in preparing our demand to labor we would be more or less in line in asking things that the union has seen fit to give to other people.

Unfortunately, I met with tremendous resistance, and I don't even blame the union, because I have to blame the other management because they brought them up in this type of manner they never heard that something should be denied to them or something they wanted shouldn't be ~~obtained~~ obtained. Maybe if they ~~would~~ would have gone before us through

a few strikes, met some oppostion on the part of the management, or have management want them to do some new things, but Mr. Garthwaite left the labor situation in the status quo as it existed at the time when one didn't have to be competitive.

Plus a new man was coming from New York, they read some articles about me, that I am sort of kind of hard guy to get along with. I tried to change their minds, to explain to them that that is not so, that our aim is only to put the company in a competitive position. I told them I've had, since I have been in this country in the manufacturing business -- I always have worked with unions, I never had any industry that I was associated where I didn't have to deal with unions, and very tough unions. When I had my plants in thesouth in the textile business I had the textile manufacturing union. Then in Reliance Manufacturing I had the garment union, which is considered to be a very militant and strong one. I was in Atlas Plywood, and I had the lumbermens union. When I was with Russell I had the automotive union, which is known to be a very hard-headed and strong union.

I told the genelemen not only did I not have a strike at any time in all of this about over twenty years of experience in manufacturing, but we did not even come to

an arbitration; we always have been able to get together on any issues without even having recourse to any arbitration.

I said, "Mylabor record is good. You can check it."

They knew the ~~plans~~ plants, they knew the unions, they could check it.

I conferred with them on the cold economic life. The company can't go on losing money, because we had a working capital of about $15 million. I said, "We are losing money at the rate of two-and-a-half to three million dollars a year and we will be losing more because your sales are disappearing. The company will exhaust all its funds.

If I wanted to be the nicest boy, give in to everything, there wouldn't be any more money. In four or five years we'll just have died of natural death. I thought that simple things, simple terms, would reach them. I said, "I'm a rich man. I'm not going to starve if Lee is not going to -- will have to go out of business, because it will have to peter out by being non-competitive. After all, we are living in a system of competitive economy. We're not like in other countries where production goes on whether you lose money or make money. What will happen to you? You have to coax me, I shouldn't coax you to make this."

I told them, "You should rather be after me to do the proper thing to keep this company in business rather than me be after you." Because I told them, "I have what

to live on even if Lee will go to pieces, but you don't. So, you should be cooperative and everything that I can prove to you is essential."

We went after that -- I'm sorry. I could not make any headway. The standard answer was, "It has been good for so many years under Mr. Garthwaite, it ought to be good under you. Who are you that knows the tire industry? Mr. Garthwaite has been all his life in it. He knew what he was doing; we had never had any trouble with him. It was good for him, it ought to be good for you."

That was more or less the sense of the answer I was getting all the time from the union representative.

I saw that I'm not making any headway with the local committee and I was -- I made an effort to go and talk to the international union thinking that maybe they would have a much better appreciation of economic facts, who have advisors, economists, who would realize the situation of the company and maybe influence the local committee to go along with such changes that we felt were absolutely necessary to survive.

I met with them and I was not making any specific demands at the time because the contract has not come yet but I wanted to prepare the union that changes will be necessary when the contract expires in June '63. We could

not negotiate because we had an existent contract, but I wanted to prepare them to be in the frame of mind necessary to make such changes that were necessary.

So we had a meeting in Akron with the international union and the local committee at which I explained the economic facts of life, and again I met with an atmosphere of disblief, suspicion, and the words of Mr. Burdon, who was president of the international, to me was -- I remember them exactly -- "Mr. Clairmont, we have had cases like that before, People come to cry on our shoulder, asking for relief. When we gave them the relief they went ahead and made more millions.

"In other words, you are just coming here to ask us for all kinds of relief so you can make more money."

So I told him, "Mr. Burdon, I'm prepared to do something that no other company has ever done with a union. You send anybody you want in our plant. We'll open all our records to them, cost records, financial records, anything you want, and see whether the situation is as I describe it, that we are losing money."

They didn't believe we are losing money. They thought it was concocted. "Look at anything you want." They almost didn't believe that I mean that. And when they realized that this offer is, I mean, something, they

had over there some economic advisors who had worked for the union by the name of Strong-~~Narovich~~ Narovec. I never even knew they exist; I never knew anybody who took part at that meeting. And the union asked me whether I would have any objection for them to send these people which the union has been using as economic advisors, making studies for them and other deals.

I said, "I have no objection. You choose whomever you want." Normally it would have been that they should choose together some engineering outfit. I said, "You choose anybody you want. They cannot find but what is the truth."

So they picked up their normal people that did the work for the union and have been doing it repeatedly. And we think they are going to come to the plant, stay as long as they want, and make both an economic survey, seeing how our costs have gone up, how production has gone up, to find out if what I explained to them is correct or not.

These people came. I don't know how much time they spent. I think about three weeks, going through --

THE COURT: Three weeks?

THE WITNESS: I think so.

A I don't remember, but I know they spent several weeks. I don't know, it must have been three weeks.

And the plant was theirs, whatever they asked, all the records were put in front of them. And the end result of this report which was given both to us and the union was the so-called Strong-~~Narovich~~ Narovec report which, in essence, says the following: that in the last three or four years -- I have it here, I could refer to it if you would allow me; I dont remember exactly the dates --

MR. TAYLOR: The Strong-~~Narovich~~ Narovec is regular in number, No. 40 in the first series.

A Well, they went back to 1959 for five years, and made a comparison of what has happened to Lee in the last five years, from 1959 to '63, and the end result was that production per man hour was, in '59, 31 and some-odd pounds; in '63 it was 25.87. In other words, production per man hour had gone down by about 30 per cent, from 31 to 25 cents; about 30 per cent.

And the same five years labor costs had gone up, including fringes, from one -- again per man hour -- from .10 to .15; in other words, 50 per cent. And that happened in spite of the fact that in this five years the company poured about 6 million dollars in equipment, put automatic machinery, just in order to increase capacity.

You would expect that capacity per man hour should be increased because we put a lot of antiquated

machinery -- had been replaced by automatic machinery that produces more. That was the reason for this ~~investiment~~ investment. And the result was just the reverse.

And they also confirmed that our losses that we were showing, which at that time they were ~~earning~~ losing about $250,000 per month, were correct. ~~The~~ They said the effect of this losses on the company's financial position is self-evident. And in conclusion they say the reversal of this trend depends to a major degree upon increasing the company's sales and production, and also an increase in production per man hour and a reduction in conversion costs per pound of rubber. Conversion costs means, in other words, manufacturing costs.

We were all the time sort of indirectly accused by the union. Why don't we sell more? The more we sell, the lesser will be the overhead included in manufacturing costs.

Well, I told them, "Gentlemen, what comes first, the chicken or the egg?" The old story. "To sell we need competitive prices. I cannot go and ask $10 for a tire that everybody sells for 8. In order to build up sales I need, first of all, to be competitive in prices. And even then it is hard to dislodge an old supplier and client to accept us as a new supplier.

"If you met competitive prices, it would be a very hard load to be able to build up sales, but we'll do it slowly and gradually, but at least at the rate of losses that we can support. If we'd be losing three, four hundred thousand dollars a year or five hundred thousand dollars over three years or four years we'll be losing $2 million, but build up our company again. But at the rate of $3 million we cannot -- or maybe even more."

Besides, we would be forced not to sell a tire. Nobody would buy from us. Phillips, which took about 45 per cent of the production of this plant, had announced five years ago that Lee should find itself other clients to replace them, because they are not going to buy from Lee any more. And that was a very nice gesture.

They could have told Lee, "Give them a month notice." But Mr. Garthwaite had a very strong personal relationship with Mr. Adams, which was the chairman of Phillips Oil and they had a large chain of gasoline stations using tires, and only due to the very strong friendship, relationship, between Mr. Garthwaite and the top management at Phillips were they so magnanimous to give us five years to replace them.

The reason they asked, because they realized Lee is not competitive, they are always behind. Any time

somebody does something, they wanted a new type, wanted competition. Lee was always two years behind and always when it was coaxed did they do the necessary changes.

So in spite of this very strong personal relationship they had to give up Lee.

Let me say that Lee didn't do one thing in these five years to try to replace anything. They knew they are going to lose half of their production.

They made no effort to go around. They probably knew they can't reduce their prices because the system of Lee was to have their own little warehouses from where they were selling, which was a system that may have been good fifteen years ago, like the grocery store here on the corner before the supermarkets came into being. and in the meantime the business of the manufacturer was to sell the large accounts, large gasoline stations, the chains, the big discounters, Sears, Montgomery Ward, all these people and the small poppa-momma shops selling to the two-car garages, and then went completely out of business.

We still continued to sell to them because that was the only way they could sell tires at the same price. They weren't like the manufacturer selling to a large gucstomer. And nothing has been done to remedy the situation, and probably nothing would be done or could be done until prices would become competitive, and even then at a tremendous loss of time, effort and money to be able to catch up with what other poeple have been doing already long ago.

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Well, when I saw the ~~strong-Narovec~~ Strong-Narovec Report, I told them, "Look, Gentlemen, you tell me." Now, we have some figures coming from their own people, and I said, "Now, Gentlemen, if you are talking about sales, if we had more sales our prices could go down."

But we were costing our sales on a basis of 21 cents per pound, not 36 cents per pound, ~~converse~~ conversion costs, as we had it, because if we have costed our tires on the basis of actual production costs, we would have had such a ridiculous price we wouldn't sell a tire.

So we said to ~~yourselves~~ ourselves, "If we want to sell, and we have to sell in order to be able to keep the plant going, let's take a price, a theoretical imaginary price that we would have if we worked at full production basis, and instead of 36 cents, if we figured our cost at 21, which was the ideal situation at which you could come, we would have had full production, like we had years ago." And on that basis we still were losing money.

And I told them this: "Look, let's forget overhead because a manufacturing cost is made out of two parts, one which is fixed overhead, whether you produce 2,000 tires a day or 5,000, and there are certain fixed expenses that go into manufacturing that are the same.

For instance, real estate taxes on the plant are the

same, no matter how much you produce.

Heating the plant is the same.

The manufacturing manager, the head of manufacturing, you pay him the same salary whatever you produce.

But this is only part of it. The other is a variable expense depending on production.

And I addressed myself--in order to cut through all the arguments that "If you would sell more your costs would go down," I said, "Let's forget the fixed costs. Let's just look at the cost which represents only wages and fringe benefits, which varied in '62 between 13%--

They took it month by month: November '62, December '62, ~~January~~ January, February, March and April. In other words, six months. The average here of these six months is about, I would say, 15 1/2% or 15 1/2 cents per pound.

I told them, "Gentlemen, this 15 1/2 cents per pound has nothing to do with overhead. This is only cost per man hours of p roduction, whether we make one tire a day or 10,000 tires daily, this is the same. This is labor put into producing a tire without overhead.

The cost of manufacturing in the other plants was 7 to 8. In other words, we were paying for labor to produce a pound ~~for labor to produce a pound~~ of tire of about 7 or 8 cents more per pound.

So the average cost of a pound--I went through the whole arithmetic. I am repeating what I did with them.

I said, "If we are going to produce even at full capacity here 5,000 pounds, 5,000 tires a day, that's about 100,000 pounds of rubber, a tire being on the average of about 20 pounds weight. At the rate of 7 or 8 cents higher cost of just wages alone per pound, that would mean a loss of $7,000 a day. 100,000 pounds is 700,000 cents, which is $7,000 a day by which we are higher in costs than our competitors.

Multiply that by about 300 or 310 working days in a year and you will see that we are throwing away over $2,000,000 a year that nobody else in the industry does.

And I was very satisfied that through this report on hand, which ~~we~~ they couldn't consider biased or prejudiced because it was done by their own man, the union is going to see the light and say, "Well, now we recognize the truth of what you say and we are going to work together with you and cooperate."

So we again started to negotiate in early May, or sometime in May, about the expiration of the contract on June 30, and we presented a long list of changes that we wanted to make in our working agreement with the union.

Actually, there were many what I call secondary

changes that would have given--that were not too important in the scheme of things.

The major change we wanted to obtain from the union is to permit us to do something the company has never done but every company has been doing repeatedly not only once but all the time, and that is that as soon as they change machinery, the composition of the tire, a new model comes out, job evaluation and time and rate studies are made to establish a certain production method.

I also had become aware in the meantime of what is considered a normal production. Let's say a tire builder is supposed to build--I don't remember the figures but I am giving that as an example now--let's say our men produce 25, we found out and knew from Mr. Barkett, the head of manufacturing, who had been in other plants where he has worked before, that the normal rate would be to produce 40 tires on that machine for that job an hour, or let's say curing tires, let's say that the men in our plant make, for argument's sake, I don't remember what the figures are so please don't hold me because I am using that as an example, 30 in ou r plant, they were producing 45 in other plants.

So I tried to show the union not through complicated economic examples because I could see that any time I would talk about economics they turned a deaf ear, so I said maybe

let me take a simple approach, and I told them, "Gentlemen, take two or three operations. You are producing so much per hour. Our competitors are producing so much per hour."

When I told them that, I remember that it was one of the members of the Negogiating Committee who told me, "What are you talking about, Mr. Clairmont? You know that if a man tried to do that he would fall, at the end of the day, dead of a heart attack."

That was something impossible to produce so much per hour, that it was beyond human possibilities.

I had made the arrangements in the meantime through Mr. Barkett, who knew the managers of other plants in the vicinity, and he said, "All right, if they want to come, we will be glad for you to visit us and we will show them."

And I told the union, "Gentlemen, this is only about 20 miles from us where there are two plants. One is in Oakes, Pennsylvania, which belonged, I think, to Goodrich, and one was in Pottstown, which belonged to Firestone. I offered to take them in a car, to come with me there, to stay for two hours and I said, "If you think that it is not possible, see with your own eyes." I told them that they lived in the same part of the country as they did; they were also white people, and "Let's see whether it is possible or not whether they can do it."

They refused to go. They wouldn't accept that.

And it was this kind of closed door adamant attitude. Things ought to stay as they are.

Well, then we arrived at the period of negotiations. We asked quite a few things and, by the way, in asking and making our remarks, we perused, as I say, the working agreements of our competitors, and tried to pick out what they had.

Of, course, they all had job evaluations, not only to do it once, as we wanted to do it, once and forever to align curselves with our competition but they had it on a constant basis because things change all the time.

And the main important point we wanted to put in our contract was this real job evaluation and establishing of rates which would give a man the same pay that our competitors were paying but only if they produced the same number of units, people in the same jobs with the same machines that they produced in other plants.

Actually the whole issue between us and the union, if we want to cut through it, all the little, all the other little things that came up, was one of productivity, because if we paid $3, and I explained to the union, I said, "If we pay $3 an hour and our competition pays $3 an hour but you produce half of what the other people produce, we are actually paying you $6 an hour on a per diem basis

or per tire basis. It's not how much per hour you make but how much you produce in relation to the same pay."

And when I said that, the whole question was really around this, which the union ~~would~~ would not want to allow us to do.

Of course, like in every negotiating proceeding, we made our demands a little more stringent, maybe a little higher, to have room to give in during the period of the ~~negotiations~~ negotiations.

And between the time that we started to negotiate and the time that we really were closed by the strike, and we put or we said "We are willing to reopen the plant based on the following ~~changes~~ changes," our demands for changes to the union agreement that were going over 35 pages, and maybe, with clarification and other things, were about, I don't know, 30 or 40 changes, were reduced only to 8 ~~pages~~ changes.

And I have in front of me these 8 changes that we were asking them to make which we considered essential and on which on some of them ~~would~~ we would have given in during the negotiations too.

There is only one we would not have given in on and that was the job evaluation because that was vital and inclusive for our survival. The others were matters of negotiation.

I spend time with the union, with the chief executive, which most chief executives of a company don't do, but I thought I could persuade them of the righteousness and necessity of these demands.

We asked at the beginning a 25% wage cut. We reduced it to 20%.

We knew that it is very hard for any union to accept a wage cut. Most of the time people are asking only for wage increases, and by asking only for a wage cut we knew that we will have a hard going time, although many times unions, when they were convinced of the survival necessity, the economic necessity, did that, at least on a temporary basis, and we repeatedly told the unions, and I personally have told them, on any number of times, that this is a temporary situation. As soon as we start making money, even a little money, we would be willing to put everything back as it was, but until such time as that happens we need their cooperation.

I told them I am here between stockholders, the demands of the union, and the clients. I have to be able to harmonize all of these interests because the stockholders are not going to stand for seeing the company losing money indefinitely in bunchings, not small amounts. Either they will throw us out as management or they will ask for the

company to be liquidated.

The clients wouldn't buy from us unless you give them the proper price and quality.

On the other hand, your union also wants ~~the~~ their rights preserved, and I have to somehow be the juggler to harmonize all of this in order to make things go.

You do your own little bit and only on a temporary basis. The stockholders will have to be patient and see their investment go down awhile and lose money mayb e for two or three or four years so that we can go to a customer and sell him tires.

And actually the wage cut I was asking about could be immediately within two or three months recuperated even with plusses, where they have accepted job loads to produce; in other words, in an hour what other people were producing in other plants, also in other union plants, they would not have not only recuperated their investment, but more.

The wage cut was only an inducement for them so that we could raise it as fast as possible because otherwise there would not have been much incentive to produce more.

This way they could not have come back to get their previous wages unless they produced more. That was

a tool or inducement to make them produce more because, Gentlemen, I want to outline here that the whole crux of the issue between us and the union was one of productivity and nothing else.

Of course, because we were losing money and the other people, our competitors were making money, we thought that we are at least entitled to have in our contract such better provisions ~~then~~ that they had.

For instance, and that was ~~copies~~ copied from Cooper's contact. For instance, in seniority, which was a big subject of discussion, we did not innovate by asking for seniority by departments, by jobs. There are all groups of important departments, tire builders, people that cured, all kinds of operations that are grouped in maybe five or six major departments or divisions.

And what happened through seniority is if a man with the oldest seniority was maybe an inspector and we were short a man in tire building, an inspector that never ~~guilt~~ built tires, because of seniority, has to become a tire builder.

Not only were we handicapped by price, but every time you put a new man on like that, his production was going to be less than half that of an experienced man.

Also, he is going to make a lot of defective

merchandise until he learns how to do it, so that the percentage of defects, instead of being what would be normal in a plant, three or four per cent, would jump to 50% because that man doesn't know until maybe after six months or a year, much about it until he becomes an experienced operator.

And we could not afford to go to try to conquer new customers, while we were being handicapped by both quality and price. At least if we were willing to lose money and give him a price at which he could buy, he would be able to get a decent tire.

Through this seniority system we could not ship these defective tires to the customers. We would immediately get a black eye with them.

So I was asking for this relief, that seniority should at least, until we get going, apply only by departments.

Now, I did not invent that. Our competitors had it in their contracts, so I said,"If it is good for the goose it is good for the gander. "

Here is a company that is successful, that makes money, with whom the union could be a little more adamant, and they accepted it, so "Why don't you accept it from us?"

And I didn't dare to ask for new things. I more-

orless tried to pick up things that our competitors already had in their contracts but they had them because they fought for ~~the~~ them.

It wasn't the same attitude as give them anything they want. We don't want any trouble.

They went through their ~~striked~~ strikes, they got what they wanted, what they felt was essential for ~~this existence~~ their existence, and so forth.

The other was holidays. Easter Holiday should be eliminated. Cooper didn't have it. I said "Why should we have it? Just because the Big Four that make hundreds of millions of dollars a year and don't care about it accepted it?" Because we copied always the Big Four. We didn't try to say, "Look, try to obtain the best deal for us that you could, like the others do."

They said, "They don't have it; we shouldn't have it either."

Vacation pay should be--we didn't ask for any reduction in pay--should be figured on the basis of 2% or 4%, which was nothing but an easier way to calculate it. We copied that from the Cooper contract. In other words, two weeks is about 2%.

There was a tremendous amount of calculation of costs to figure every employees' prior wages, and they did

it like a ~~sho-tcut~~ shortcut because it amounted to practically the same thing, two weeks' vacation.

They took it as a percentage of hours instead of going into all the figures, and they were trying to cut overhead and not have lots of employees do this figuring.

And it was accepted. It was in another contract. So we picked it up from there. We did not invent it. That was another point.

Discipline was just a change. We had this kind of wording before. I think it was a couple of words that were changed.

Let me see what other points were there. Other terms and conditions. They will be the same.

Vacation, which they inserted, that they will have to pay for vacation in case of the death of a mother-in-law or a father-in-law, which the big ones accepted. Cooper didn't have that. They only said that if a man is absent during the vacation, or a day before, or a day after due to death in the family, he is not going to be penalized on his vacation pay, but they didn't pay for it, and we had to pick up every penny to cut our losses.

So I said that at least we are entitled to what they have given to other people, competitors who were successful.

So that if you eliminate all of these very unimportant points which I say were not things that we asked only for ourselves but had been accepted in other places, the whole thing boils down to two things: wages and job evaluation program and the setting of incentives, both on some jobs where they already had incentives and on other jobs where they were still paid on an hourly basis, where the rest of the industry paid on an incentive basis.

And the purpose of this wage cut is not for the people to make more but to give them the incentive that would have been the inducement for them to produce more so as to be able to cut that 20% that we were asking them to at that time take.

Even with those 20% figures, that wouldn't have been the medicine for us. They could cut down 20% and still not produce, and they wouldn't have been any further along, but that would have been the incentive for them if they wanted to make the same money as before, to produce more.

Otherwise we still would have had, for any change, to have arbitration and a loss of time. We didn't have time because we wanted to put the spring under them to produce more through this wage cut.

There were then a lot of times when we had talk

about this job evaluation program, that we have too much freedom to do it, that we would be maybe arbitrary about it, and at the end proposal we made it also subject to the grievance procedure. In other words, if we do something that seems to them to be entirely out of line, although we couldn't do more than the rest of the industry, as a matter of fact, we asked for them to produce 2/3 only of what the rest of the industry did, we knew that we cannot do it overnight because this is a job that has to be done gradually, so I said that I am satisfied if they do it, not at the same rate as the other people produce it, but if the other people produce 40, you produce 25, or produce 35, but still produce behind them, but showing some progress towards the ultimate goal to eventually reach the same levels as the rest of the industry.

And it says here, under Job Evaluations, that clause, "In case of grievances resulting from the implementation of the job evaluation program, we, the company, intend to consult a reputable competent and independent industrial engineering firm," as an arbiter, " and shall be guided by its recommendations in connection with the subject of grievances" which still goes to the grievance procedure but we can ask some industrial engineer to sustain our point of view whether we were right in setting such

incentive rate or not.

So we accepted the grievance procedure for anything that would happen next with this job evaluation. It was not at our suggestion.

And we thought that with this change, or with these changes which had, in our opinion, been extremely reasonable, they will accept this and come back to work.

Furthermore, I told them, "Gentlemen, I am going to do again something that no other company has done because the other companies were trying to obtain what was due to them, the proper job loads, that the men will produce so many units in an hour without giving the union anything for that."

I told them, "Look, anything that they are going to save through that, because I can't expect, it's unreasonable to expect that you are going to do overnight in one year from way behind where we are to reach the other, and in the meantime at least help us cut down our losses, but if we save money, we will split it with you the money."

And I showed them with arithmetic, on July 3rd I made the statement, and I gave them two alternatives, to divide with them any profits the company would have, monetary profits that we would have, a certain percentage--I don't recall exactly the proposal but I can refer to it

if it will help--to participate in the profits of the company.

Then I thought and said to them, "Maybe you will say, 'Well, maybe the company will never have profits because you splurge in other areas than labor. We may work hard but you may put yourselves big salaries and you may put youselves other overheads so that the company will still not show profits in spite of our doing our share.'"

Then I told them, "I will give you a second alternative and you choose between the two of them," although we could not do much in the area of being a publicly listed company, and not show profits if they had been there, because we had ~~pub~~ public accountants, and I don't know what, but still to dissipate any suspicion they may have, and knew they were suspicious of everything that we did, "I will give you another way to split with you just based on ~~predictivity~~ productivity, that if we bring our costs not even to 7 or 8 cents an hour, but to 10 or 11 cents"--I don't remember what the figure was--which was much higher than the cost of our competitors, just labor costs, "We will split it with you so that not only, and I gave them the whole arithmetic, that you can have fast recoupment of the 20% cut that you are taking even if you don't reach the same level of production as our competitors, but smmehow in

between where we are now and what they are doing."

I tried because, as a manufacturer, I knew that things cannot be done push button overnight. I had enough experience to know that this will have to be done gradually. And I thought that that would help, where they would see that this is only an academic proposition, the 20% cut because they can, they want to work not as hard as they did but still less hard as people in the competitive plants that they can practically neutralize it. And I thought that that would help.

I also gave them an example that in the Dunlop situation people accepted a certain wage cut, although Dunlop is a company that makes one of the ~~larges~~ largest in the world that makes very substantial profits on an all-over basis of I don't know, hundreds of million dollars, and could afford to have a plant where things were not so good, and we were just fighting for survival.

Well, none of that helped. The union didn't give up one thing. We reduced our demands by the time we had the strike, to a minimum, and would have given the vacation pay, probably, things like that, but the whole crux of the thing was to reset jobs and wages on an incentive basis that would have been a little closer to that of the competition.

And they were adamant and we were adamant because on that it was not a waste. It was a matter of life or death.

So then we had the ~~strikend~~ strike--

THE COURT: Maybe this would be a good time for a recess. I should think you need a rest.

THE WITNESS: I can go on if you can.

THE COURT: Well, why don't we stop to take a breather for five minutes anyway.

THE WITNESS: O.K.

(Recess.)

MAURICE CLAIRMONT, resumed.

BY THE COURT:

Q We got as far as the strike.

A In the meantime I was working previously in order to obtain additional customers who realized that if we are going to obtain little customers one by one, one here and one there, we are never going to make headway.

So I was try ing to replace the loss of the Philips account and all our branches that were going to seed by some important customers that could take big chunks of our production provided that we can give them, of course, a competitive price.

Everybody
Nobody, especially the big customers, wants even a cheaper price than the normal one.

And finally I landed an account, the first one that the company ever had like it, and the name of the firm
~~first~~ was Pep Boys. It is a very large outfit. They have very many outlets.

Q They are a west coast firm, aren't they?

A No. They are in the east. They are all over the country, but they are primarily centered in the northeast.

never
We ~~never~~ expected that they would even do business with us but I sold them on the idea that their main headquarters were in Philadelphia, that we are the nearest to them, so freight would be an advantage, quick service would be an advantage, and it was the first big account that we got.

We had to make special molds for them because all of these bigger accounts have their own brand names, so we had to make special tires for them.

Usually the customer is the one that pays for the molds, and they are quite expensive. In this case we spent about $40,000 for their molds, but in order to land the account we offered to pay for the molds.

They were a little bit skeptical, but that we

would be able to do it, but I convinced them.

I went to the union and told them that we can obtain this big account, and they were very happy about it, of course, but I thought that that would induce them to come along--

Q This was during the strike?

A No; before the strike. I am going back to before the strike, because there are other things that have to be explained in connection with the strike.

I also realized that just to try to create a sales organization, to put people together--and I have tried to before and I know that nobody would want to come with Lee--it's an impossible task. We had about thirty salesmen all over the country. That would take too long and we could not afford to do it that slow.

So I developed an idea to try to get somebody interested in Lee that could take half of the production, or maybe all of the production, and I contacted two such outfits.

One was Montgomery Ward and the other was a very large cooperative in Alliance, Ohio, who had about, I don't know how many, but over a million farmers, a farm cooperative, using more than we could produce. They could have taken the whole production. They were buying more than the whole

production of Lee.

I thought maybe they will take half from us and buy the other half outside. And I visited them and tried to explain to them that there would be no sales expense, no administrative expenses by dealing directly with us, and it would be like their tire plant and they should buy an interest in Lee, or we would sell stock in Lee to them like Sears has with one of the rubber companies, Armstrong Rubber, where Sears has a substantial financial interest and takes, I think, more than half of their production.

I was trying to duplicate this pattern with another large consumer like that where they would be the customer, and they would be able to buy cheaper because there would not be any expense to them and at the same time they would get profitsin Lee if we will make money by being an investor in Lee.

Q When did you have this conference?

A That ~~has~~ happened ~~and~~ between the time I became chairman and the time that we had the strike, while I was trying to ~~create~~ create sales and th en maybe come back to the union and say, "Look, I have this big account now." I was always trying to confront them with something what I would give them the incentive to do what I expected them to do.

Well, one of the difficulties was that these people were flirting with the idea, but they said, "Well, we don't want to take all the past obligations of the company."

Of course, I didn't tell them about the labor troubles. I didn't tell them about anything because it was before the strike, hoping that the union would come along eventually when they will see that we have this big customer.

They said,"Well, we don't want to have anything to do with the past," and we had this past service liability. It had to do with all the obligations that were troubling the company relating to its past.

So I told them, "Look, we can make a new company and change the name. We will bring the company into the plant and you can--we will sell you stock in this new outfit," but that would have been too big an obligation for the company to take, all of the past service obligations, the pensions, and so forth.

So I told the international union, I had a meeting with them, and I told them, without mentioning the names, but I told them I discussed with some very large potential customers, consumers, and asked them would they somehow contribute if we can do that, that the company can cut this obligation in half so that the company, without putting

the burden on the new stockholders, to say so, cut it to half.

Well, I didn't meet ~~that~~ there with any success, and eventually none of these people wanted to enter into any agreement with us. Partly due to that, and partly also because they were a little bit, well, skeptical about our ~~possibility~~ ability to deliver them tires at the price that they would want to buy it.

Q But the Pep Boys you did make a contract with?

A Yes. And that is the only gesture the union ever made without changing the contract. They agreed with Mr. Barkett to let some tire-builders be recalled without--outside of seniority. This is the only cooperation or cooperative gesture I ever saw in all my dealings with them.

Around the time when the contract time came, we would have had to recall some people that had no experience in tire-building, and they would be delivering to the Pep Boys junk instead of proper merchandise.

So they realized, and without changing the contracts, but it was like a man to man agreement, and they let us bring back some experienced tire-builders instead of having to use the seniority clause.

So all these efforts were inconclusive.

We had, prior to this, asked for some relief in

connection with the welfare agreement, and we presented four changes to the union, and eventually didn't succeed in any of them, and only an amendment that was made in December '62 which didn't give us more than some clarification to the old contract which was a little bit ambiguous about the meaning of certain clauses, and I wanted it to be precise so everybody knows what it means. But we didn't get any of those.

I would have insisted at that time that we get at least--and I was very insistent on one clause, what we call co-terminus. In other words, that the welfare agreement, and the working agreement should expire at the same time.

This was always the case before the '61 agreement. And the first time that the union put this clause in was in '61. Prior to that they always expired at the same time.

The reason I didn't want to do that is because I felt that in case the union strikes for any reason, capriciously, or for any unreasonable reason, they will have the company with its back to the wall knowing that in such case the company still has to continue with all the benefits, funding, and all the other medical and insurance benefits, all the other advantages provided by the welfare agreement, and I felt that that was both unfair and unreasonable, that

if you strike we should still take care of your welfare while you are on strike.

But the union devised this clause in order just to make the company always avoid a strike knowing that even if they have a strike they still have to continue with all of these very substantial benefits.

And if the company discontinues its operation, it will have to pay a very substantial amount in special distributions, which was part of it.

As a matter of fact, one of the clarifications that took place in December, after we gave in to the union, and the reason I gave in, not without some negotiations, but at the end I thought to myself, "Let them see that we are flexible, that we give in, althou gh we demanded," because I knew that the working agreement is coming in about six months.

I knew also that I am being received by the union, as the new chief executive, that is, with a great amount of ~~suspicion~~ suspicion and antagonistic feelings. That's the way at least it appeared.

So I wanted to show them that we are flexible, that we can be dealt with, and I eventually gave up practically on all the points that we were asking except for those clarifications which said, among other things, that

if we discontinued during the period when the agreement is still in force, we have to pay them a special distribution.

I didn't like it but I accepted it because I didn't expect that this thing will happen. It seemed to me to be rather academic because if we have a strike, it is not going to last a year. And, as a matter of fact, I felt that I was entitled to it because, again studying the Cooper contract, they had a clause that if they at any time stop operations on ~~the~~ the plant, or move a plant, they don't have to pay any thing.

I DIDN'T want to bring that in at that time because I knew it was a sensitive area. I am under suspicion anyway, and they will say, "Oh, that's what they want," because the Cooper contract has a clause here which says "Notwithstanding any other provision of this agreement, the company has the right to cancel the contract and remove its operation upon 30 days written notice to the union without incurring any liability because of such cancellation and cessation."

In other words, they didn't like an operation because of the way the union--they could just go out, move to another location, start another operation withou t any liability. I could have confronted the union at that time with that clause, but I never confronted them with the

other agreements, and I felt, well, let me be what you call a good boy because it may help build some confidence and ask the new management, so if we have to negotiate a new working agreement, there will be some good will.

So in all the proposals we made to the union, we always met with the same answer, a flat no.

Even when we had to have the strike, we were hoping that by gaining time we are going to be able eventually to come to some agreement, some give and take.

And we suggested to the union, "Let's continue under the old agreement" when they wanted to strike, but "with the 7-day notice given by each of us, if we want to stop operations, so we will give 7-days' notice. If you want to go on strike, give us 7 days notice," which was a reasonable demand. You still can strike. It's just a question of seven days.

They answered No, and the reason for the seven days was very obvious, because when you put stock in preparation to make a tire, it takes about seven to eight to nine days until that raw rubber becomes a tire. It goes thrugh various phases of processing during which time, if that stock is left standing, it deteriorates. It is useless.

So if we don't know, we don't have any notice, it

may catch us with a tremendous amount of stock in process which would completely deteriorate due to the chemicals in it, and so forth, and be absolutely valueless after that.

We also wanted to have seven days so we could ship to our customers, to fill the orders to Philips, to the Pep Boys, and to other customers, the tires that we had in the plant because otherwise if we don't give them delivery on time, and especially if there was a strike, they will refuse delivery, and we will find ourselves with tires that we could not even sell later because they were a special brand which you are not allowed to see sold on the free market, which you are not allowed to sell outside, so all these tires would have been valuless to us because the customers would say "You didn't give me delivery in time so I am not going to take them." We could not even sell them because they were not our regular brand that we could sell on the open market.

So there were very obvious reasons why we needed some notice in order to prepare ourselves for the strike.

Also, to ship out the molds that belonged to the customers, and our own molds in case we wanted to manufacture some other place in order to keep the business going during the strike, or part of it.

Well, they wouldn't accept even that. Well, we had nothing else to do but to accept their verdict and

stay on strike, in the belief that these people who never had a strike before will get a taste of what it means to be on strike for a couple of months and see that they are not making any money and eventually come around toa more reasonable attitude.

I assumed, and from what I have heard I could not say for sure, but from what I have been given to understand, the union had the same idea.

"Well, let's give them a taste of a strike. They never had a strike. Let them see what it means to have a strike, and they will come around and give in."

Well, we figured out that to be on a strike, in spite of the tremendous costs, because we kept the whole organization except labor and the plant, all the tire compounders, chemical engineers, we had the maintenance men, I don't know. We had sixty or seventy pepple all around, administrative people, in case we reopened the plant, to have the key men around so we could start operations, and all the other expenses, real estate taxes, insurance, any amount, we figured out that it would be cheaper for us to stay on strike than to manufacture tires and sell them at a loss.

It is different if it is a profitable company where they are losing profits and are on strike, but we

were losing losses.

And I told them, "Gentlemen, you are not going to impress us or make us be afraid through your strike because I have nothing to lose here. We are all probably at this point even but I think we have less to lose and it's you who will be the losers."

Any amount--I don't know--you may have 25 meetings, 20 meetings, I don't remember, after the strike, trying to negotiate, I'm sure, I don't remember exactly, but we made several concessions during these meetings from various points. I don't remember what they were but they must be in the records of the company because I was not part of negotiating committee but the results of the meetings were reported to me.

The union didn't give up on one item, not on one. Or at least make a gesture, some kind of a gesture to show some kind of at least symbolic attempt to give in on anything while we were making concessions until we arrived at a point of a stalemate where we couldn't give any more because we thought that if you make a step you make a step, and we were making all the steps and they were making none. So we arrived at this stalemate situation.

In the meantime, I would see whether there would be something else that would induce the union and the

people of the union told me they wanted to force me out of the plant and at the negotiations meeting they said "Well, why don't you sell the plant?"

Well, I made efforts to sell this plant. I do not remember exactly when this contact took place but I think it was probably after the strike.

I contacted every major manufacturer in the United States. There wasn't one that I didn't contact. Every tire manufacturer was contacted because the big ones could not even be interested because they were afraid of antitrust proceedings.

The smaller ones wouldn't touch us with a 10-foot pole because they were--it's a small industry, only ten or twelve companies, and everybody knows what is happening in everybody's shop. They knew about the labor situation. They wouldn't even talk about a merger, or a purchase, or any kind of proposal that I made to them.

I was ready to make anyth ing just to be able to get rid of this baby. Maybe I thought we are not personna grata with the union, and they have taken an attitude, they became emotional, and maybe somebody else would be able to persuade them about something.

So, on account of this labor situation nobody was interested to become involved with Lee.

Then we stayed in this situation until the welfare agreement which expired a year later came to be renegotiated, and we asked for certain changes there. I don't know what they were. I don't recollect exactly. But I do not think they were too important. I know we would have been willing to negotiate them. But the union took the attitude "It's not even worthwhile talking about it. Let's talk about the working agreement. If there is no working agreement there is no use to talk about the welfare ~~welfar~~ agreement.

We hoped that with the welfare agreement expiring the union would be a big jolt to them to go back into negotiations because the people would realize that they will be exposed to lose a lot of rights that they had until then, pensions, a lot of things that will go down the river unless the plant is reopened and unless they go back to work.

And we were very hopeful that this is going to make the union really negotiate seriously and come to some terms with us.

We were banking very much on that.

Also, through the grapevine we heard that many of the employees, a great majority of them were very disgruntled with the attitude of the union after having been

a year on strike. They needed the jobs, and they were sort of in opposition being formed for going back to work, and replacing the present committee that was very hardnecked and very uncooperative.

So we were banking on that too, that slowly this so-called opposition about which we heard would prevail and more and more people will be on that side to go back to work and sit around with the company and give them the relief they wanted.

Well, none of that, however, materialized. We also hoped that the international union that had been subsidizing like they always do a strike with certain relief that they give to the people that that will come to an end because I think they only give it over a certain period of time, and losing now the benefits under the welfare agreement, that all of that will eventually produce the result of the union not being shortsighted and seeing what is economic and cooperate with us.

Well, none of that did materialize unfortunately so that after we saw that there isn't any chance to come to terms with the union, and the thing continues and we are losing money head over fist, we sort of made a last attempt to try what other people have been doing or done, and exceptionally successfully, but we thought that that

would be the last opening for us, to try to reopen the plant with anybody, not only with the union. We didn't have any more contracts with the union. We would have made the plants and the jobs available to anybody, like start anew with a new plant and hire new people.

If some of these people want to come back to work, they are welcome.

If some of these people do not want to come back to work, th ey don't have to , and if not, we will hire new people.

(Continued on next page.)

And I made all kinds of steps, took all kinds of steps in this direction.

Mr. Heinrich went to the employment office. We met with a very negative answer there. I don't remember what other steps we took. I think we advertised for jobs.

But the union, who became in the meantime, informed about what we are trying to do, started a very big campaign of violence -- there's been violence before -- against some of the people that were more or less sympathizing with the company and wanted to go back to work. Any time there was somebody that said something about that, there was violence or something happening, stones were thrown through the windows and things like that. Not to speak of other violence that happened during the picketing against personnel of the company, against moving goods in and out and so forth.

And the union became very threatening at that point, so we could not -- we realized there wouldn't be a chance to do that unless there would be tremendous bloodshed or violence of extreme force.

At that point, I advised our board that it seems that there wouldn't be any chance to come to terms with this particular union, and at that time the board decided that we better abandon the manufacture of tires and get out of

the tire business, which the board decided.

THE COURT: What was the date of that decision?

THE WITNESS: I don't know. It was late in 1964, before the end of this year, because we had to just finish the fiscal year. We didn't want to start a new fiscal year with losses.

A We had to have our general meeting after that end of the year and we didn't want to have to tell our stockholders we are still on strike and no results and be confronted with a lot of questions: why do we still stay in the situation after two years? A year and a half? We're out there, and it was the longest strike in the history of Pennsylvania State.

And besides, we had exhausted everything possible. They went to the labor board, as you probably know, presented their case. Even the labor board, which was very ~~poor~~ pro labor in Philadelphia at that time, it was actually made only out of former union people, but when confronted, at least that's what our labor lawyers told us, with the proposal that we made with them, to split with them any productivity savings or to split with them any savings the men will have, they saw the good faith of our proposal, so that they decided that we have been bargaining in good faith. And the same thing was confirmed later in an appeal to Washington, that

the company has been bargaining in good faith and it was the union who did not.

So when we exhausted practically every legal factual tool, anything we could think of, we had to throw the sponge in and say there is nothing more we can do, no use to continue with the situation.

Then we were confronted. What are you going to do now? We knew that the liquidation would mean a tremendous blood bath, to say so, financially, because it is one thing to sell a company and it is another thing to sell machinery and old buildings under the hammer, calling an auctioneer to sell every piece of machinery, get not even 50 cents on the dollar, get 20 cents on the dollar, because it's not a going buisness.

And I started to make some inquiries about after we decided and found out. We called some people to value the plant, what could we obtain. Typical auctioneers. Some ridiculous figures. What could we do? We were being forced to do it. There was no other way.

But we were lucky in a certain way. In the stroke of luck that we had, and I think the people in Conshohocken had, was that just about that time the government had approved the sale of another sick member of the industry. There were two sick members of the industry, we and another

company, Seiberling Rubber in Barberton, Ohio. That company also had fallen more or less due for the same reason. The Seiberling family, second or third generation, they didn't care any more about the plant, they also didn't have much of an investment left on it, and let things also coast along lightly.

It was bought by somebody in Toledo by the name of Lamb, an industrialist in Toledo. He couldn't make a go of it for the same reason, it was too late to change things around. So he was ready to close the plant. It was under the Kennedy administration at the time.

Normally, the government would never have permitted Firestone, the second largest member of the industry, to buy out another competitor, because it was a typical case of antitrust. However, Seiberling was the largest employer, in fact the only employer, in that town of 10,000 people, so half the town depended on employment there.

I don't know, there were some political pressures from the senator from Ohio; that could mean putting about 800 families out of work. So the government closed an eye, to say so, and let the social considerations prevail over the antitrust considerations and allowed Firestone to buy Seiberling.

Based on that we went back to Goodyear and

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approached Goodyear and told them, "Look, if they have allowed Firestone, maybe they will allow you, if you are interested in Lee."

Goodyear at that time needed additional production, tobbuild the plant and to train and to take in is a question of years, but they needed additional production because the tire business was good. And I convinced finally Goodyear to become again interested and they took an option provided the government would have no objection to them.

Of course, we had the precedent of Firestone and the two situations were identical. Here are people out of work, hundreds of families. If nothing happens, then these people would be out of a job in a small community.

And they would not want to buy it because they knew what the labor situation was and you couldn't even give it to them for nothing. Who wants to buy trouble? So they took an option -- they leased the plant from us for one year with an option to buy it, subject to the govenrment having no objection.

THE COURT: Was the lease subject to that, also?

THE WITNESS: I do not remember that, your Honor. I think it was, or the lease was not important. It was $200,000 a year or something like that, which, after taxes,

means 100,000, and for a company who makes $150 million, that's something they could risk. Especially seeing the government would have a hard time to deny them on an identical situation what they approved for Firestone.

A I wanted, of course, to sell it, not to lease it, because the leasing was again nothing. We didn't know what is going to happen. It was just postponing for a year what we may have to do now.

But they didn't want to commit themselves being aware of the union situation, the labor situation. They were not afraid of the unions, because they have unions in all their plants, but they could use it efficiently and they knew what the situation at least was.

And finally the government approved that they can lease this plant, anyhow, to approve the contract with the option to buy, as it was. And Goodyear at that time came to some arrangement with the union because there's no such a thing that ever existed for a rubber plant, to exist without the union.

But they reopened the plant on probably some arrangement they must have had with the union, that the union will not come in and try to unionize the plant right away. The union -- the local union -- was dissatisfied about it and picketed the plant even after the contract with Goodyear.

But it didn't help them too much and Goodyear reopened the plant under the lease without the union contract, and I thihk the plant was unionized, I don't know, six or seven or eight months later.

In the meantime, people had to come to work for Goodyear on their terms. They hired people that will do and work because they had no agreement with the union. Whoever came to work for them had to do things the way they wanted.

So they established job loads and incentives and rates exactly as they had in other plants; and after that was done, they didn't mind the plant to be unionized. So the final end result was that they accepted from Goodyear much more than we ever asked them to accept.

How much does a man produce in an hour, that is a job load. The incentive said if you produce what is expected, what a man can produce based on time studies, based on whatever has been proven in the industry, then you will make the 3.50 or the 3.40 or whatever that job demands.

So the end result was that whatever the union didn't want to do for us, they had to go back to work without the contract on Goodyear's terms, which were much, much, from the point of view of productivity, higher than what we asked them to do.

And that was the end of the story, your Honor.

That gives you a summarized sort of chronological set of facts the way I know it happened.

THE COURT: Have you got another question?

MR. TAYLOR: We are afraid to ask one.

I think, for instance, for the purpose of continuity, that Mr. Clairmont might want to at this time also give a short dissertation on the events concerning the Republic Rubber Division in the same vein.

THE COURT: You ask him what questions you want to ask him and he will answer it.

BY MR. TAYLOR:

Q Mr. Clairmont, would you give us a summary of the set up and conditions at the Republic Rubber Division in Youngstown and the events that transpired there?

A Yes.

Q If you will.

A The situation at the Republic Tire Division was about the same from the point of view of labor's attitude because it was the same management, the same company. And, in other words, the attitude was we have to get all we wanted. There was never any opposition.

However, the product was a little better than tires. Tires is a staple, like buying tea and sugar in

the grocery, whereas over there the products were of a more differentiated type. There were ~~carpetings~~ couplings and other things which were engineered for a specific purpose and where competition is not so easy to determine because every product is a sort of -- or many of them are tailor made products.

THE COURT: You could not just shift from Lee to some other --

THE WITNESS: No, tires are a known thing. A tire of that type construction is like you buy, I don't know, sugar. It has a price. You go to every grocery and in two minutes you know what the price ought to be. Over there because the products, or some of them, were more differentiated the competition wasn't just as tough.

A But we also had allowed a lot of things to happen in that plant, like here labor didn't do what they were supposed to do and we have been asking for certain changes in the working agreement, to put the plant on a basis where a plant has to be.

We went through the same amount of discussions. I found the local committee there a little more enlightened than in Lee. You could sit and talk with them and argue with them. They also, of course, were defending their status quo only, but there were people that were not as short-sighted as I found them here, where they wouldn't even

want to listen. The law was there even before you finished to say what you wanted to say.

When negotiations were continuing here, and, of course, they went out on strike because it was the same union the same company, when we went -- Lee went out on strike. I have a suspicion that if Lee -- by Lee I mean the tire -- would not have gone out on strike, the other people wouldn't have. But they were following the tire, which was the largest unit of the company employing more people.

Well, when we had the situation over there, we contacted ~~couldn't use~~ a company called Aeroquip, which since then was sold to a larger company, but which was one of the major companies. They also had been sold to another company, I think Bendix or one of those, who also needed additional production, who were themselves the largest customer of their division ~~division~~. They were by far the largest customer buying certain products from the Republic Division.

We induced them to -- as a matter of fact, not I but the manager of the plant who knew very well the president of the company, sold them the idea of buying the Republic Rubber Division. I don't even know him, I never contacted him. But the local man, Mr. Zacharias, who was the manager of the Republic Division and had a very long

time relationship with the president of Aeroquip, they came to me and said that they would be interested to buy the plant.

We negotiated and came to an agreement, but they agreed also to take over all the pension obligations and anything else. There was no question of special distribution there because the plant had not discontinued its operation. The strike came to an end going through different mechanics. I don't remember what it was because Aeroquip didn't want to buy the plant while it was struck, so we made a temporary working agreement for 60 days. People went back to work.

The Aeroquip Company bought the plant, taking over all the obligations and that was the end. So that the thing was settled within, I don't know, four months after the strike.

THE COURT: Next question.

A We were by far not losing as much money, never. It was their division losing -- they broke even or lost a little money, but it was not a losing operation like the tire business.

Q Did the negotiations with Aeroquip Corporation -- were they proceeding while the strike was under way in Youngstown?

A Yes, they started while the strike was on.

Q You mentioned earlier that you were not able to discuss the subject of the purchase and sale of the Conshohocken and Lee Tire Division while the strike was under way, nobody wanted to buy trouble. The situation, I take it, at Youngstown was different then?

A It was different because the product, as I told you, the company lost very little money there, and the product was not as competitive. And Aeroquip was a customer of the company and could meet the product. They were buying a big chunk of the Republic Division's production, and instead of starting the new plant, there was already a plant there. It was in fairly good shape; I mean, physically and other ways, so they bought the plant to assure themselves additional production.

Q But the plant at Conshohocken was also, you said, in pretty good shape?

A Yes, physically; yes.

Q Yes. But it was not a desirable physical plant?

A But it was losing money hand over fist. The product was much more competitive.

Q But as long as the physical plant itself, machinery and equipment, was in good shape, then couldn't

another company reasonably be expected to come along and use it as a productive facility?

A They could have used it; as a matter of fact, Goodyear did. But they knew it not on the terms that the labor was working in the plant there.

Q So, therefore, it was a situation, you feel, whereby a change in the labor agreements was necessary to effectuate a sale of the particular plant in question?

A Whether it is a change in the labor agreement, it was important to produce tires at the price at which they can be sold.

Q Well, was there a change in the labor agreements at Youngstown that facilitated the sale to Aeroquip?

A There were some changes, if I'm correct. When the working agreement was put into effect for the temporary 60 days, I think there were some changes. I don't remember exactly.

Q In other words, the company undertook to come to an agreement with the union on a temporary working agreement?

A Well, the changes that we were requesting, as I remember it correctly, and the Republic Division were somehow different than those in the Lee Division, because over there we had other problems with some nurses and things that had been put in at the demand of the union all along

throughout the years that was not normal in the industry to have, and we were trying to get rid of those at the suggestion not of mine, -- Ididn't even know -- Mr. Zacharias was the manager of the plant.

I said, "Look, they stuck this in, which is no rhyme or reason to be, and we're trying to get rid of all these unusual concessions that the union has been putting in here which is costing us money," And also we said we wanted to put, like every other manufacturing company has, the same clause for job evaluation and setting rates that would be appropriately done on a scientific basis and not on a haphazard basis, which historically has happened.

And we didn't have many other difficulties in Republic, except the acceptance of that clause.

Q Well --

A And that was a clause that the union and Lee didn't want to accept by any means and, of course, I guess they contaminated the thinking of the other division. That would be solidarity between the two, excpecially since this was the bigger one.

Q I want to clarify this.

The Republic Rubber Division was the bigger or the Lee?

A No, the Lee was far the bigger.

Q It was the thinking of the people at Lee Tire that contaminated the thinking of the Youngstown people, you feel?

A Yes, it is my feeling; I could not prove it. If it wouldn't have been for the Lee Ruber Division, for The Tire Rubber Division, we could have obtained probably from the Republic Division the concessions we wanted among which was the most important really that mattered to us, was the job evaluation, restarting of wages and incentives and the production and so forth, but they could not very well come to an agreement with us and we were,all the brothers, in limbo.

Q Was a wage cut and the job evaluation program and incentive rates part of the key elements in the company's proposal to the Youngstown Division?

A I do not really know. I don't have the proposals. If you give me the proposals --

Q When you took over the company you just referred to the fact that the Republic Rubber Division was not losing much money. Was it in fact losing money at all?

A I don't have the ~~figure~~ figures. I know the situation was not as catastrophic as over there. It was the kind of loss you could live with while you were trying to improve.

Q Was the Lee Tire Division at Conshohocken losing money when you took over control in the summer of 1962?

A Yes.

Q Had the company published any audited figures, audited interim financial statements, at about the time when you were investing with the possibility of taking over control of the company in the summer of 1962?

A Yes.

Q And you were familiar with those figures, were you not?

A Yes.

Q Is it your testimony that the company was then showing losses?

A Yes. On a monthly basis they were showing some losses.

Q But on an accrued basis for whatever, the quarter, semi-annual or annual, whenever the statement might appear, were they showing losses?

A Yes, but again as you probably know you can show or not show losses. Today people are talking about conglommerates and that accounting is not a science but an art. For instance, let's take one example. For the year 1961, before I came, the company showed, I think, a small loss or a little profit. But how did they show that? By changing their depreciation rates from the typical way they were doing and cutting it down to half. So they picked up a $250,000 profit by an accounting gimmick.

If I am going to value my inventory that is obsolete and sitting there for one and a half years, and put them at full price instead of 60 cents on the dollar, at which maybe I can sell, of course I am not going to show a loss. But if you put things at which they are worth, we found supplies over there that have not been used in years because the machinery has been changed. The supplies were for machinery thrown out of the plant a long time ago, and they were put like assets into the inventory, that we had to junk, to throw out, and things like that, because Mr. Garthwaite was trying to minimize the losses and present to the investing public and the stockholders the best picture possible.

All of this was said in our report to the

stockholders.

Q In the summer of 1962, Lee Rubber & Tire Corporation was listed on the New York Stock Exchange?

A That's right.

Q As such it was a reporting company under the Securities & ~~Exhcange~~ Exchange rules and regulations?

A That's right.

Q They filed regular quarterly reports with regard to earnings and insider transactions, and all that?

A That's right.

Q You were an important stockholder, were you not, in the year prior to the summer of 1962?

A I was not that important. In order to analyze the sort of detailed operation of the company I had five or eight or ten thousand shares. Sometimes I'll buy a few thousand, sometimes I'll sell a few thousand. It was something if I didn't like it maybe I will sell it and lose a few dollars, and maybe if I ~~can~~ can make a profit of $3 I will sell. It wasn't consequential. It was one security in a portfolio that may have eighty.

Q Be that as it may, I am sure you would make prudent investments and watch such investments.

A Yes. At the time I started to increase my investments I started to inquire more and ask more about the

company from Mr. Garthwaite.

Q About when do you recall you started to increase your investment?

A I believe the big increase took place in 1962.

Q Early in 1962?

A Throughout the year 1962.

Q When did you find out about this change in the accounting procedures of the company whereby they reduced their depreciation factor by one half?

A After I became associated with the company.

Q By that you mean after you were elected to the board of directors?

A Yes, and I started to look into things and to sort of open drawers and detect things. Before I didn't have a chance to look at things like that because I was outside the company.

THE COURT: That was before you became chairman of the board you found this out?

THE WITNESS: No, no, before that I only participated at meetings. How many meetings between July, when I became a director and September? There was maybe one or two meetings.

I told you I was aware of the company sliding down and losing money, but it didn't show the kind of losses

that would have scared me until then, and I thought having all the tools this company seemed to have I would be able to reverse the trend, and although I may have continued to lose money for a while after I have taken over, but other companies that had losses of greater magnitude than Lee was showing had been able to reverse them.

I bought companies that when I take them over had already a very substantial history of losses, so I had confidence that I can reverse that, provided I have what it takes; in other words, the financial situation that would keep me going for as long as I need to reverse the situation so that the patient doesn't die before the doctor arrived. That kind of thing.

And I knew the plant was in good shape, and the product was an acceptable product, so I thought there are things here to work with.

Q You just stated, really, that your specialty is reorganizing, revitalizing, if we can use that term, companies, particularly public companies, but substantial companies. That is your specialty?

A This is not exactly so. I have never been looking -- I am a substantial investor, except for the textile industry in which I have been engaged all my life, and I know since way back, since I was a child I was

working in the mills my family owned -- I have been associated throughout my life -- I can qualify myself rather as a specialized investor. I have never looked to take control of a company unless I had to. I prefer that a company does its own work with its own management, and I took over management only when there was nobody else there to do it.

The same thing was true in several situations prior. I have never looked. I took the position as an investor. Witha company able to solve its own problems, fine. Mr. Garthwaite did a lot of persuasion of me to take over managment of that company.

Q Certainly as a ~~prudcent~~ prudent investor -- and if you are only going to remain in an investor's capacity -- you would want to find a profitable, stable, substantial company with a good growth record and prospects and good management in which to invest your money, if you are only to become an investor? That would be correct, wouldn't it, as a statement?

A No. As an investor I buy all kinds of situations. I buy also very poor situations because I think that the price is very cheap in relation to its potential to turn around. I bought now Genesco, to give you an example, in the market I bought quite a big quantity. It is doing

very poorly. It is losing money. But at the price of 12 I feel it is a good buy, because the company may turn around and the stuff will be again 20.

MR. TAYLOR: Excuse me, if I may interject, your Honor, I wonder if that is a stock tip.

A (continuing) In most cases the companies have turned around without me doing anything. They put in new management. In some places I worked with the management because I was a large stockholder without having to manage it.

Q Can you give us an example of some of the substantial investments or participations you have had where you were an investor and the company turned around where you had little or nothing to do with it, really?

A Yes. Reliance Manufacturing, Russell Manufacturing, Atlas Plywood. These are companies in which I have been associated actively in management.

Q These are where you took an active management participation?

A I was active in management.

Q Were you also active in Rice-Stix Corporation?

A Reliance bought over Rice-Stix.

Q Were you part of the management of Rice-Stix when Reliance took over Rice-Stix?

A Yes.

Q And did you thereafter become part of the management of Reliance Manufacturing?

A Yes, I was. When I bought my interest it was done by negotiations. I bought the interest of an old stockholder that wanted to get out. I bought his interest and became in the management replacing the one that sold me the stock.

Q Did you acquire an interest by private negotiations in Reliance prior to Reliance taking over Rice-Stix?

A That's right.

Q Were you also a heavy investor in Rice-Stix?

A Not I. Reliance bought Rice-Stix, not personally.

Q You have stated you were part of, you were a substantial stockholder of Reliance?

A Right.

Q And you were taking part in some form in management of Reliance?

A Yes, I was chairman of the board.

Q At the same time there was another company called Rice-Stix?

A Right.

Q Prior to Reliance taking them over?

A Yes.

Q Were you involved in Rice-Stix prior to Reliance taking Rice-Stix over?

A No.

Q You were not?

A No.

Q You had no stock interest in it?

A No, none whatsoever.

Q And no part of the management of it?

A I didn't even know they existed.

Q You say you had a participation in Russell Manufacturing. Forgive me, but would you please clarify for us chronologically, was Russell the next company that you are referring to here following Reliance?

A After we sold our interest in Reliance to other people, I don't know how much time after that I became involved in Russell Manufacturing.

Q Would you please try to clarify for us, pin down some time elements for us? About when was the Reliance investment, and when did you sell?

A I think we sold our interest in Reliance in 1954 or 1955; end of 1954, maybe.

THE COURT: Who is "we," Mr. Clairmont?

THE WITNESS: I mean I and other people that were, to say so, representing the working control of which I was the largest stockholder.

Q How soon after that did you become involved in the affairs of Russell Manufacturing?

A It must be within a year after that.

Q Is Russell the same company you referred to as being in the automotive parts ~~ubeiness~~ business?

A Yes, most of their business was in automotive parts, brake linings and clutches.

Q Could you tell us the business ~~or~~ of Reliance and Rice-Stix?

A They were in the garment manufacturing business.

THE COURT: Both of them?

THE WITNESS: Both. Except that Rice-Stix had also a division. It was about 60 per cent a garment manufacturer and 40 per cent sort of wholesaler of all kinds of goods.

Q Soft goods, hough?

A Soft goods. It was in the same business as Reliance.

Q With Russell Manufacturing in the automotive parts business, did you just come in from the outside and make an independent investment in the company, or were you invited

to participate?

A In Russell Manufacturing?

Q Yes.

A No. There was a block of about 20 or 22 per cent that was offered -- in other words, making the rounds -- because at that time they were losing money, they already had one or two years of losses, substantial losses, and there was a block that was at that time being offered by various people that had been local people that wanted to get out of it because of the situation. It was a special situation where the president became mentally sick, eventually hospitalized. The president of the company had sort of, to use a colloquial expression, gone off his rocker, and the company had suffered on account of that, made very poor decisions. The company started to lose money heavily, but again at the price at which that block was offered to me I felt -- I looked into the company, I visited the executive vice president at the time. It seemed to me it was the kind of thing that can be brought back, and that is exactly what happened.

Q You said that you were offered this block of stock by certain local people. What did you mean by that?

A There were local stockholders that had stock in the company.

Q You mean geographically they lived, resided, did business, within the vicinity?

A In the area.

MR. MOSS: I don't mean to object, but to go into the details of who he bought his stock from is going very far afield from the subject of this lawsuit. I have sat patiently for three hours. I think it's all been fascinating, but this particular area, I think at least, requires some kind of --

THE WITNESS: If it interests you, I never got into a proxy fight in a company, and I never forced myself into a company, if that is what you are trying to find out. I have never obtained the control of any company either through a proxy fight or by forcing myself in.

THE COURT: I must say I have been so fascinated I haven't queried what your objective is, but I don't see its relevance.

MR. TAYLOR: I wasn't trying to proceed in that fashion.

THE COURT: Maybe this would be a good time to take a break. Maybe you can organize the balance of your examination with a view to narrowing it down to what is relevant, because the witness is under subpoena but I don't suppose he has to make us all financially hep, unless it is

necessary to this lawsuit.

(Adjourned to 2:00 p.m.)

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AFTERNOON SESSION

2:00 p.m.

M A U R I C E C L A I R M O N T resumed.

DIRECT EXAMINATION (Continuing)

BY MR. TAYLOR:

Q Mr. Clairmont, this morning you told us that when you became associated with Lee National you became aware of the fact that the company had lacked management, it was fairly rife with nepotism, and was not a forward-looking management team; is that correct?

A That's right.

THE COURT: I don't think he used the word "nepotism," but that is a good characterization.

MR. TAYLOR: I am characterizing on the basis of what he said about old friends.

Q The company had, to the best of your knowledge, certainly been a fairly successful company over the years, would you say?

A No, I wouldn't say so, In the last four, five years it has been very unsuccessful.

Q Do you know how long the company had been in operation?

A Yes.

Q Could you tell us? How long had the company been

operating?

A Many years. Fifty, sixty years.

Q Did it have at least substantially a record of profits during that period of time?

A Yes, sure.

Q So when you stated it had fallen on bad days, do you really mean it had become less profitable than it was at an earlier time?

A Much less profitable. In some of the years they even showed losses.

Q Some of the years?

A Before I came.

Q Could you give us an idea of what years you are talking about when the company showed losses?

A Within the last two or three years,if we eliminate certain non-recurring profits which had nothing to do with operation, they could have shown a loss. In other words, for instance, in one year they picked up a profit of a few hundred thousand dollars from the liquidation of a European subsidiary where they were selling tires to PXs for American soldiers in Europe. They liquidated and picked up a profit without which profit they would have shown a loss in the tire division.

In another year, for instance, they picked up an

item which was self insurance, which was a reserve for self insurance of a few hundred thousand dollars.

Then the company went and insured itself outside and reversed that reserve and picked it up as a profit. That was not shown in the statements. We later discovered it and showed it in our statements, in subsequent statements that we gave to the stockholders. But at the time when I became associated I was not aware of that because the company had showed only a final profit without showing the source of this profit.

Q During this period of time this company had Peat, Marwick & Mitchell as its accountants; is that correct?

A Yes.

Q And the annual statements certified and audited by Peat, Marwick & Mitchell said through that period of time that the statements represented the fair and accurate position of the company at that time according to proper accounting standards applied uniformly?

A They were, but they didn't show, for instance, to what extent the profits have been derived from non-recurrent income having nothing to do with operations.

Q To the extent that a company did not differentiate in 1962 between ordinary income and non-recurring

profits, is that difference one that would have applied to any other company during that same period of time as far as accounting practices are concerned?

A Yes. Many companies do report, and today, as a matter of fact, it becomes almost an obligation after what's happened in accounting gimmicks and so much protest has been registered, ~~and~~ on account of that the companies are showing that in a much more detailed way if it is a non-recurring profit. At that time SEC rules generally speaking were much more ~~lenient~~ lenient so you showed just the end line, bottom line profit or loss without going into this, especially since they were not here of such magnitude. Maybe if they would have sold something of ten million dollars they would have felt obliged to show it, but it was just a few hundred thousand dollars, but it made the difference between profit and loss.

I may add something else extremely important in connection with profits and losses. It was a situation under which management could very easily manipulate figures in a perfectly legal way and show profits or losses. Lee had a very substantial reserve going into a few million dollars, what we call Lifo reserve, last in first out, in opposite to Fifo, because Lee had kept on its inventory rubber maybe that was bought at 6 cents a pound, natural

rubber, years ago, maybe twenty years ago, and kept it at the same price.

Any time you would reduce that inventory and brought it to a normal price of rubber, which may have been 15 cents at the time, you would show a profit by the deduction of the Lifo inventory, cashing that part of the Lifo reserve that you wanted by reducing the inventory.

Q That could only take place once, isn't that correct?

A No, no. Let's say you have a reserve of two million dollars. I can pick up $200,000 a year. It's my decision. By the amount I reduce the inventory I can pick up two million dollars by reducing that part which is one Lifo. Many companies do that, and it is perfectly legal accountingwise, and you don't show it.

In subsequent years when we started to reduce this Lifo reserve because of reduced operation we didn't need such a large inventory we started to show in our statements exactly the amount which is derived from the reduction of Lifo, but in previous years that wasn't done.

So it is very hard, except for the few instances that you can pinpoint, to decide how much of these profits -- because Mr. Garthwaite was very anxious not to show losses, of course, or to minimize losses to the extent

possible.

Q You have to obtain Internal Revenue Service approval to change from Lifo to Fifo, don't you?

A They didn't change, but you can reduce your Lifo inventory.

Q You mean you can write down the value of the asset, the inventory, in your quick assets part of the financial statement?

A The company still was on Lifo for that portion of the inventory; they didn't change it. Because ifyo u change it you bring all the Lifo inventory back and say from now on we are going on Fifo; we are going to appraise the part that is Lifo on an actual market basis and go to Fifo.

The company didn't do that, but any time you reduce your Lifo inventory you may put it back later, but any time you reduce it it's becoming a profit.

Q On this very point, when you referred to manipulation within legal limits of certain items on the balance sheet, isn't it true that you can write down obsolete inventory, poor sales contracts, plant and overhead, increase your depreciation reserve based on marketing conditions, or replacement costs, or anything like that?

A If it is justified. You can take a writeoff of

inventory if it is justified. If it isn't worth a quarter what it's on the books for, sure you can.

Q To the best of your knowledge, Mr. Garthwaite and his management team had been members of the Rubber Manufacturing Association over a period of many years; isn't that so?

A I guess so.

Q Would you say that they were fairly active participants in the operations of that trade association?

A I couldn't say that because I don't know.

Q Would you say that Mr. Garthwaite, Sr., was a fairly knowledgeable man in the tire manufacturing business?

A I wouldn't sayso, no.

THE COURT: You wouldn't say?

THE WITNESS: No, I wouldn't say, because he gave very little time to the business.

Q When you first acquired a sizeable interest in the business which you said was approximately the summer -- June, July or somehwere in there -- of 1962, you had been acquiring it in the early months of 1962 -- at the time you made your decision to go forward, could you tell us what you did to investigate the company, and how you sized it up, as to the merits of an investment on your part and

the part of your group?

THE COURT: I thought he answered that this morning.

A I thought I answered that, but if you want I will repeat it.

Q I would like you to specify, if you will, rather than generally. With some specifics, how did you size up the company with regard to its sales, distribution system, overhead, both corporate and manufacturing, labor costs, managment ability, and modernization?

THE COURT: I thought he did all that this morning.

A If you want, I have no objection to doing it.

THE COURT: You will just get another lecture, which I found very entertaining and instructive, I might say.

MR. TAYLOR: Ithought perhaps the witness could answer it in his best words, and that's why I specified the subjects I am sure he covered in his investigation.

Q Did you look into the affairs of the company?

A As much as one could look from the outside.

Q Did you investigatie the profit and loss balance sheets,the financial statements of the company?

A Yes, I did.

Q Could you tell us what the cash position, the working capital position, of this company was?

A It was very good.

Q What would you call very good? Do you have any idea of figures?

A In other words, the company had no long-term debt, no outstanding obligation, it was in a sound financial position, but in a lousy profit and loss position.

Q It had a substantial amount of assets or invested capital but poor earnings, is that what you'd say?

A Yes, very poor earnings with very poor management. I was aware the management wasn't even -- I wouldn't call it poor; inexistent is a better word.

Q Non-existent?

A Yes.

Q The company had a fairly high net worth, is that correct?

A I dont know what you call fairly high, but for its size it was in a comfortable financial position.

Q Would you recall in 1962 that the company might have had a net worth of approximately 24 million dollars?

A Probably in this area.

Q Another way of categorizing net worth is net liquidating value. If you were to liquidate the assets of

the company and turn them into cash, that would be the cash left in the hands of the owners?

A By no means.

THE COURT: Even I know that.

A Any man who knows something about business knows when the customers know you are going out of business they don't pay, or you have a hard time collecting from them. They try to buy your inventories, the inventories being completely dislodged, unbalanced -- they try to buy from you fifty cents on the dollar. The plant and machinery is worth what old iron is worth, or a little more.

So liquidation is suicide for any company, unless they have all their money in cash. But the company had an unusually large inventory in relation to its sales, much higher than any other company because they couldn't sell. They kept manufacturing without being able to sell, so they piled up tremendous inventories. These inventories would have taken a tremendous licking.

Generally speaking, anybody that knows something about business knows that any liquidation is suicidal.

THE COURT: I think you have answered the question.

Q Apart from the inventory problem, you investi-

gated the sales and marketing situation of the company; is that correct?

A No. That I did not investigate too much because I didn't have a chance to do that. That would have taken a whole survey. I knew only that the Lee tire had a good name and acceptance in the trade.

Q You have already testified that you knew that the plant was in pretty good condition?

A Yes, that I knew.

Q And you knew that it was an unprofitable operation, fairly unprofitable?

A I knew that, or breaking even, or making some small losses.

Q Did you feel that the company was in a solid enough cash or ~~caiptal~~ capital position to be able to afford a thorough reorganization as you might have had in mind?

A Yes.

Q With regard to the overhead of the company, did you investigate the ~~operations~~ operations, the internal operations, to discern whether there was something unusual about how the company was structured as far as its overhead was concerned?

A No, it is impossible to do that as an outsider. You look at a balance sheet, you look at the bottom lines,

you look at the profit and loss statement, but to do that you have to be on the inside, to go into every nook and corner to find out what is overhead, what is this, and what is that. That I did after I got in.

Q You said the company, or Lee, had a good name. I suppose the tires were accepted in the market?

A Yes. They didn't have a very bad name like being a poor qualtiy tire.

Q So it was acceptable, good quality merchandise, but they just weren't selling enough of it?

A They were not competitive pricewise to get the kind of customer that the manufacturer needs.

Q But when you went to invest in this company you knew that it had a good name, a good quality, but didn't have enough sales?

A It's not that they did not have enough sales. The sales consisted 45 per cent Phillips, 50 per centits own brands, and maybe only 5 per cent of the type of sales that the manufacturer has at the outlets which are the normal outlets of a manufacturer.

Q Did you in your investigation in 1962 come across knowledge of the sales structure, the fact that Phillips took 45 per cent of the company's production?

A No, I did not know that. I only saw sales.

Theynever show the breakdown, how it breakdown.

Q When Mr. Garthwaite invited you to take a substantial investment position, and ultimately a management position with the company, did you not discuss these matters with him?

A Not so much sales, but I saw sales 40 million almost without any progress but sort of hovering around the figure. Besides sales is what you make them. I was not aware of the high cost. That was the only fact I didn't know about, the high cost of production of the company.

Q You have referred to the fact that --

A I have blamed allthe lack of profits on poor management.

THE COURT: You had blamed? You say at the time?

THE WITNESS: In my mind I blamed the poor results of the company, the lack of progress, on poor or, rather, as I said before, inexistent management, because I was aware there was nobody there. After I met during the period while I was still outside, I visited Mr. Garthwaite, and he introduced me to the others. I realized there was no management team there, to speak of.

Q If that was your impression then on coming into

the company, after you were there did you change your mind about the fact that management was responsible for the losses in the company?

A I knew already before then, and as a matter of fact I attributed the losses and the poor results of this company to lack of management, but I thought to myself if they can lose a little money or break even with a little management how much better can be done if you inject the proper management, and that is what has to be done.

Q What did you think had to be done when you took over management of the company?

A First, I didn't know myselfwhat had to be done. First, I made a thorough survey from the inside, preparing to sort of make an inventory of the people in it, the inventories in it, and all the other things that you have a chance to analyze once you are inside and have all the records at your disposal and you are the boss.

Well, as I told you, the first inkling or eye-opener to me of how high cost operation Lee was I became aware of that only when I started to try to hire people from the outside for the key positions we needed.

When I told them the price at which we have to sell and our costs, they threw their hands up. They said to me, "We can sell you much cheaper than your cost of

production is and make a profit."

And, as a matter of fact, that is what happened because later after the strike we ~~went~~ went out and contracted to have the same tires made by outside manufacturers, by U. S. Rubber and by Mohawk, and the prices we bought from them which gave them a substantial profit were lower than the cost of production we had. And I think we even showed to the union that in our negotiations, that we could buy the same tire we were producing from another manufacturer cheaper than our own costs, and they were making a profit of 10, 12, or 15 per cent.

Q So when you contracted out during the strike your production, you produced cheaper than producing on your own?

A We didn't produce. We had it produced for us.

Q That is what I meant. Cheaper at Mohawk and U. S. Rubber?

A Yes. And that price they charged us included a quite good profit for themselves.

Q Were those at one particular plant of those companies?

A It was one at Mohawk, the Mohawk Rubber Company. And then when they finished their contract with us, U. S. Rubber.

Q Do you know whether those companies had a labor force or production employees represented by United Rubber Workers?

A Yes, every company in the tire business is represented by the same union.

Q You contracted out your production, or a certain amount of production, during a substantial period of time, and I would like to know to what you would attribute the difference in the cost of the manufacturing done outside your plant as against the manufacturing done ~~inside~~ inside the plant.

A I think I made it clear that it was a matter of productivity, that our people produced exactly less in an hour on a certain operation than people are producing in other plants.

Q Did you then have knowledge of the working arrangements between the local unions at the plants in question for Mohawk and U. S. Rubber -- did you have knowledge with respect to their job evaluation and incentive programs and their productivity per man hour.

A No. Those particular plants at Mohawk and U. S. Rubber you are asking me?

Q Yes.

A No. We just negotiated how much do you want for

such and such tire according to these specifications. We negotiated a price. It was between management and management.

Q You just stated it was your higher cost of producing as against their cost of producing to which you attribute the difference in the price.

A I only state the fact that let's say if we bought the tire from them for ten dollars our cost of production on that same tire was twelve, for instance. That they could sell us at ten dollars and make a profit against our own cost of twelve, and we had to charge more than twelve, gives you an example.

Q Is it your testimony that the higher cost that Lee had was attributable to labor cost only?

A That's right.

Q Or is it only one factor?

A No, that was the only factor.

Q That was the only factor?

A Or by far the factor that accounted for 90 per cent of the reasons.

Q We are now talking about 1963, when the strike was on.

A As a matter of fact, I could add for your enlightenment something else. Other rubber companies had

long-term debts, so they had to add their interest on their debt. We didn't have any. We should have been cheaper than most of them because Lee was in the position of having no debt, and, therefore, no interest costs to charge to production.

Q You are attributing now the differential in the cost almost exclusively to the cost of labor without any regard to general corporate overhead, the cost of doing business within your sales and marketing system, your sales contracts and the value of the sales contracts, the prices at which you were selling, or any other factor? You are going to stick with that?

A Absolutely. There were maybe minor things of overhead. Mr. Garthwaite had a Caddillack that we cut right away, and things like that. But they were very small in relation to the volume. He had another house, a big club-house there, and all the emoluments of management that we cut right away, cut to the bone all the overhead that we could that was within our power to cut.

We did within three weeks complete, have advertising, all the fringes, all the little things that we could, cut that was within our power to cut, but one thing we didn't have power to cut was labor costs because that had to be done by agreement with the union.

Q Could you tell us just prior to the strike and when you came to an impasse in your negotiations with the union for the renewal of the working agreement, could you tell us in your opinion what was different, or how the Lee contracts, the labor contracts, were more expensive or cost the company more or created a higher labor cost than any other comparable contract in the industry?

A We were paying on an hourly basis. We were very much in line with the other companies.

Q On an hourly basis you were in line?

A For example, a tire builder in our plant made 3.10. In other plants 3.12 or 3.09. We were very much within a few cents in line with the rest of industry. But what the men did for the $3 an hour, actually it cost us -- if a man produces for $3 an hour half the units he produces in another plant that costs us $6, right?

Q Right.

A That was the whole key to the Lee problem.

Q It is true that you sought a 25 per cent, and then ultimately reduced it to a 20 per cent wage cut?

A If a man is on an incentive plan where he has to provide a certain number of units in order to get 3.50 an hour, and our man was paid 3.50 no matter whether he produces one tire or fifteen, being on an hourly basis,

of course it is human nature to take the line of least resistance and make it as easy for himself as possible.

Q What information did you have with regard to the productivity per manhour at other tire plants in the industyy?

A I told you we hired a cost accountant that brought us every operation and the total cost in the breakdown of the tire operation from Cooper. Their cost per manhour of rubber produced was exactly half of ours, which has nothing to do with overhead.

Q This is one competitor. Where was Cooper locat ed?

A One of their plants, I believe, was in the mid west, and one in the south.

Q Were they comparable in size and sales to Lee?

A A little larger. They were smaller a couple of years than us, but they overtook us. Everybody overtook Lee.

Q I see.

A Then Mr. Barkett came to us from Mansfield and confirmed exactly within a penny the same kind of costs that they had in Mansfield.

Then the Strong-~~Norwich~~ Narovec report confirmed further our cost ~~and~~ of production in pounds per manhour have gone up.

30 per cent while our labor cost per hour has gone up 50 per cent.

Q With regard to the job evaluation program you say now it was the most crucial item. The first question I would like to ask you is, did you ever tell the union that was most crucial to the company?

A Yes. All the time.

Q Did you ever make an offer to the union that as a quid pro quo, in consideration of their doing something in the way of making a major amendment in the job evaluation program, you would give in on any other points we have mentioned and that you have referred to this morning?

A We did give in, if you will take the history of this negotiation, from our original demands to the eight points at which we finally arrived, and even subsequently, we gave in even on the eight points, we reduced our demands. You see any number of concessions we made without one on their part.

THE COURT: His question was, did you tell the union you were ready to make concession if they did?

THE WITNESS: We didn't have to tell them; we actually did them. It was more than telling them.

I remember offhand a few of them. We asked that the cutoff should have been after a layoff of six months.

Then we extended that to one year instead of two years.

We originally asked for 25 per cent. We asked for only 20 per cent.

We originally didn't have any offset for the wage cut, our proposal anticipating profits or savings from productivity. We came and gave them. That was subsequently done in a chronological way all the time. We gave them more until we reduced practically our demands to what I would call a minimum, and half of those eight points, or five of them, wereincorporated in other union contracts of companies that made money and were successful, and we asked them, "How come that these people accepted such things from employers that made money and are successful, and you won't give them to us which you know are poor little Orphan Annies?"

Q Did the union during this period of time make any concession?

A None.

Q Against your constantly offering --

A None whatsoever.

Q Did Lee Companywide insist at all times that you had a certain package that had to be accepted no matter what the consideration was you were offering inthe way of profit sharing, that they had to accept an entire package?

A The package changed all the time more and more to their benefit because we were r educing the original package all the time until we brought it down to just what we considered essential, and would the union have come and accepted some of our points, especially the ~~improtant~~ important ones, the chances are we would have given in on holidays, and things like that we considered less important, though we needed every penny we could to cut down our losses.

Q I would be interested to hear your opinion with regard to what you considered a proper job evaluation program. Since this is key to the situation.

A That is something I cannot tell. That is a job for engineers to come and they do it on a very scientific basis, and all other companies have done it. We were not asking for something unusual or an exception. We were asking for something every other company in the business has done and do consistently.

Q Did you ever offer a bilateral or mutually shared job evaluation program whereby the company and the union could each bring in time study men to study jobs?

A Absolutely. Because all the results if there would have been a disagreement -- our proposal was they should be subject to arbitration by an industrial engineer appointed

by the American Society of Arbitration. Not chosen by us, not chosen by them, but appointed by the American Society of Arbitration.

Q I am now referring to the time --

A And in the end after that, because I saw the union opposed even that, we even made it subject to grievance, to the proper grievance procedure they already had in the contract for everything.

Q You offered a job evaluation program subject to the grievance and arbitration procedures in the working agreement?

A Right.

Q Did you ever offer that in writing?

A It is in our eight points. If you read them you will find they are there.

May I read it?

Q Yes, please do.

(Pause.)

Q Before you commence, sir, would you tell us what document you are referring to?

A I am referring to the new terms and conditions of employment effective July 18, 1962.

MR. TAYLOR: That would be work rules, No. 44, regular.

Q Yes, sir.

A On page 2, the last paragraph, after we talk about the job evaluation -- actually a misnomer; it is not only job evaluation but setting of incentive rates, and so forth.

"In case of grievances resulting from the implementation of the job evaluation program the company intends to consult a reputable, competent,independent industrial engineering firm, and shall be guided by its recommendations in connection with the subject of such grievances."

In other words, we could on our side take counsel, or we could have done that without even saying it here.

MR. TAYLOR: With your permission, Mr. Auerbach would like to take this part of the examination.

BYMR. AUERBACH:

Q Mr. Clairmont, you say in here the company shall be guided by its recommendations in connection with the subject of such grievances. Now, suppose the union is not satisfied. Is there anything in there that permits them to go to arbitration?

A It says the grievance provides -- the paragraph says exactly what is to be done.

Q But there was no contract in effect.

A It is subject to the grievance procedure provided by the union, and they spell out exactly what they have to do.

Q Wheredoes it say it is subject to the grievance procedure, Mr. Clairmont?

A Such grievances in connection with the subject of such grievances. If it is a grievance it has to be handled like a grievance, obviously. If the union was not clear they could have asked us to modify the language here, and say, "Will you change the language to make it clear," as we have asked for clarifications.

Q This was not a contract, this was work rules, weren't they?

A Yes, but they were proposed before to the union.

Q When did you propose them?

A During our negotiations.

Q No, no, please.

A That was the sum and substance, the result of our negotiations.

Q Mr. Clairmont, this particular paper which is Exhibit No. 44 in evidence, it consists of three sheets?

A Yes.

Q This was put up on the board, we were told by

previous testimony at three o'clock on the afternoon of the 16th of July. Is that substantially correct?

A Yes.

Q And it was to go into effect a day and a haalf later, at 7 a.m. on July 18th; is that correct?

A I guess so.

Q Isn't that what it says?

A Probably.

Q Was there anything in here that says it is subject to a contract, or arbitration, or anything else?

A It says what is spelled out there word for word.

Q But this is the only thing that was put up?

A All of that, of course, has been discussed and presented to the union previously and rejected by them.

Q Please answer my question.

THE COURT: He said that already. If you ask him silly questions you are going to get silly answers. He already said this is what was pointed up, and there is nothing in there about it.

A If you wanted a clarification while we were negotiating you could have asked for it: Would you change the language in such and such matter to be clearly understood on that subject? And we would have said, "Sure."

Q When this was put up, did you thereafter tell the

union that they could have changes in it?

A It was up to them. When you make a proposal the other party usually comes with a counterproposal. This is negotiations: We will accept that, but we want such and such changes.

They never made a counterproposal. They said no. The only answer we heard was flat noes. They never said, "Let's take this particular point and let's see, maybe we will give in on this, or maybe we will if you change this." We never had counterproposals.

Q Mr. Clairmont, at least one of the witnesses who were officials of the union testified that they spoke to Mr. Conway, and Mr. Conway said -- they spoke to him after it came up, and Mr. Conway said, "We have no authority to change this; we were instructed to put this into effect by the board of directors."

MR. MOSS: I object. That is a misstatement of the testimony. The testimony is that they called Mr. Conway, and asked if he would be willing to let them continue working under the old working agreement, and he said no.

MR. AUERBACH: Do you have the record to point out that is what was said? I don't think so.

THE COURT: That conforms with my recollection, but you have a record; why don't you look it up?

Anyway, what difference does it make?

THE WITNESS: It doesn't make any difference. Mr. Conway had no authority. We had a negotiating committee at the time, and they were the ones to sit around the table and say yes or no, we will accept this thing, and what is your counterproposal?

Q Let me ask you this question, Mr. Clairmont: You are familiar with job evaluation programs from your previous experience in industry, are you not?

A Yes. I am not a specialist, but I know exactly what they mean.

Q But you have heard them and you have put them into effect?

A Frankly, I have not because I have always had people in charge of that.

Q Under your direction?

A No, not under my direction. I cannot delve in every detail, because it was the normal way and the chief executive doesn't usually delve in all of these things; only if there is a big difference or it comes to an impasse is it brought to my attention. It takes the normal course, and somebody makes a decision.

Q Is there in any of your proposals in connection with the job evaluation program a setup whereby the union could

have its own industrial engineers do their own time study as well as having the company engineers doing their time study?

A I do not remember the wording, but I am sure the spirit is if they are dissatisfied with what we say or do we can go to arbitration, probably; I don't remember. I will have to read it again. But the ultimate authority of that would have been not us, and not the union, but an arbitrator. The only thing we insisted was that arbitrator should not be a lawyer or should be formerly a retired businessman but should be an industrial engineer not appointed by us and not appointed by the union but by the American Society of Arbitration, which was an impartial man and qualified to pass judgment.

So we didn't reserve the decision in our hands, although I want to call to your attention in the Mohawk Rubber contract they had the right to do it themselves. But we tried to bend backwards so that the union wouldn't have any qualms or fears about it.

Q I would like you to address yourself to the specific question that I have asked. If you have the various proposals of the company there, please feel free to look at them. Is there anywhere in any of your proposals --

THE COURT: I can answer that question. The answer is no.

A As a matter of fact, may I read? In this job evaluation program it says something that is very important, and that was that we could not set arbitrarily any standard we want. We said standards shall be established by the company so the average experienced operator working at an incentive pace can make earnings that will average the expected hourly earnings.

There was enough protection there. In other words, if a man was supposed to make 3.50, our standards were supposed to be on the basis that working at a normal incentive rate he will make 3.50. It wasn't just that we had full latitude.

THE COURT: Where do you find this?

THE WITNESS: Under the job evaluation program. The fifth paragraph of the first page, which was the normal protection we copied from another contract. We couldn't just say we were going to put any standards we want. The standards had to be put in such a way so the man making 3.50 could be expected to make 3.50.

Also, we wanted to establish a base rate plus a percentage above the base rate, if you see the paragraph before. Base rate plus ~~plust~~ a specified percentage above such base rate in case the man does better than the base rate. If a worker produces more he could make more. So there was

enough protection here. As a matter of fact, we weren't even innovators here; we copied from other contracts.

Q Do you remember whether there was any discussion about letting the union have its own engineers make their own study?

A I was not with the negotiating committee to know exactly what transpired. I was advised only of the end result: was there any concession made by the union, any counterproposal? I was not part of any negotiating committee meeting.

Q Wasn't the job evaluation program at the heart of your demands?

A It was, and it was summarized right here.

Q So you don't recall anything about the objection that the union couldn't have their own engineers make their own study?

A I was not a member of the negotiating committee to know exactly what has been said back and forth.

THE COURT: However, that wasn't brought to you as a proposal?

THE WITNESS: No, we never been confronted, your Honor, with a counterproposal saying, "Here, we will accept this; here it is in writing what we want."

They never offered us any counterproposal.

Q Now, you stated before, you mentioned the Mohawk

agreement. Do you recall the union officials saying to you during the course of the negotiations if you want the Mohawk contract instead of our contract you can have it?

A No.

Q I'm sorry, not Mohawk. I meant Cooper contract. You talked about Cooper?

A No, they never mentioned it. As a matter of fact, we never brought up the Cooper contract. We knew what it was. We knew it did things. But we never brought the Cooper contract in our negotiations because we never wanted to name names in order not to hurt the people. They had been kind enough to give the little booklet to our industrial man, so I didn't want to put them on the spot and expose them. We never mentioned the source of our information.

Q You mentioned your costs ofproduction were higher than anybody else's costs of production. In point of fact, outside of having gotten the cost accountant man who had worked for, I think you said Mansfield --

A Well, it was for Mansfield, it was from Cooper.

Q Well, aren't the production costs as opposed to the union ~~contract shiwch~~ contracts which are printed -- but aren't the production costs kept confidential by each company?

A As a rule, yes.

Q Then what company's production costs were available to you?

A Cooper's cost and Mansfield's cost. We didn't even have to have. When we saw somebody selling a tire for $9 that it cost us to produce $10, it was obvious our cost of production was out of whack.

We knew that wasn't overhead because I had cut overhead to the bone, less overhead than any company could have. The overhead is controllable. We cut all executive salaries by 15 or 20 per cent.

Q Did you ever have anybody mowing grass in the last few months of the contract in 1963?

A I don't understand the question.

Q Yes. Mr. Hess and Mr. -- somebody else --testified that in the last few months prior to June 30, 1963, that as many as half of your production employees were assigned to mowing grass, painting and other non-production jobs for which they were getting their regular pay.

A I know we had many people put on other work because we expected to pick up -- like we didn't want to lay off people and put them in the meantime on other jobs of maintenance, of maybe repairing the roof or things of that kind in order to keep them on the payroll. Because we were hoping that we'll be able to pick up some business and put them back to work; and instead of laying them off we were taking advantage of using ~~this~~ these people on some repair work that was necessary in the plant.

Q But that was charged to production cost, wasn't it?

A That was not charged to production cost because this is not overhead, that has to do with production. When you say "production,costs," you ~~get~~ mean production people. You see, one is overhead and the other is production costs that has to do with the mere production.

Q Well, if a foreman tells a tire builder, "Go mow the lawn," and tells somebody --

A We never put tire builders on mowing the lawn. The only time that somebody --something like that could have happened was on the last seven days before the strike.

During the period between the 1st and the 16th of July, when we knew that we're threatened with a strike every day, we didn't want to put stock in preparation and stock in process and at that point maybe we put some of these people, because we do not want to produce and be caught in the middle with a strike the next day.

So during those 16 days, where we were working with the threat of the sword hanging over our head every day, at that point we didn't want to put new goods into manufacture starting from the beginning of the manufacture, and we put the people on such extraneous jobs because we on purpose didn't want to produce and be caught. That may have been the period during which we did some of those things. Certainly not before that.

Q Let us take before June 30th, because there could not be a strike until the contract ended. If I told you that Mr. Hess testified that tire builders and others of the higher level production people were assigned to non-production jobs part of the time, all of the time, but at

every time there were as many as 50 per cent on that, do you know anything about that?

A Mr. Auerbach, I will tell you that I was not at the plant all the time and I was not in charge of this discussions and I was in New York and not at the plant.

But to my knowledge, I do not know of anything like this, people just being put there, except during that period when we did not want on purpose to manufacture because we were afraid the next morning we can have a strike on our hands.

Q You expected a strike during June?

A After the contract expired, yes, in a few days before.

THE COURT: He said it had not happened until June 30th, according to the best of his information.

A We knew that the attitude was very much in favor of a strike a few days before, so we were playing it cautiously in order to not be caught -- excuse my expression -- with our pants down.

Q You testified that you did not want to lay people off. Were you afraid that if you got an order that you could not call the people back?

A If we got an order --

Q You said you did not want to lay people off because

you were hoping to get an order and then you wanted to have them ready for producing; am I correct on that?

A Mr. Auerbach, may I answer your question? If you point this to show -- if it is your point to show that it was us that made the cost of production higher by putting people that would have been production on an extraneous job, you take the Strong-~~Narovich~~ Narovec report and see what happened the year before, see that the cost of production is no change.

May I refer to it?

Q No. I would like you to answer my question.

A So it did not have anything to do with the cost of production. You take the cost of a pound of rubber per men hour and you will see it is constant, the year before, six months before. So that it shows that it had nothing to do with what we did or didn't do. It was more or less the same.

THE COURT: Mr. Clairmont, according to the archaic rules we operate under here, you are not supposed to worry about why he asks a question; just answer as best you can.

THE WITNESS: All right. I thought it will save time.

THE COURT: You never save time in this business.

Q What I would like you to answer: You said several

times that you did not want to lay the people off because you were hoping to get an order or orders.

A We didn't lay off more than we had to.

Q Yes. But if you laid off people and then you got an order, was there anything which would prevent you from ~~recall~~ recalling them?

A No. It wouldn't prevent us but it was no point in laying them off today and going through the procedure of calling them tomorrow;only when we knew that the layoff is going to be for any length of time that we lay them off. No use to lay off anybody for two days and call them back three days later.

Q Why not?

A Because it was red tape in order to put the call, to put them on the list for recall. I mean, we can't play with the individuals back and forth like that.

Q Mr. Clairmont --

THE COURT: What are you trying to gain by showing that they had too many people --

MR. AUERBACH: This is a question of credibility, your Honor, because --

THE COURT: How does it establish his credibility? He either did or did not have people mowing the lawn. Assuming (a) that he had people mowing the lawn and did not

know about it, or assuming (b) that he directed people to mow the lawn.

MR. AUERBACH: But he also, in regard to his statement, said that he did not want to lay people off because he was hoping to get an order. Now, I think your Honor has heard enough testimony to know that most of the people live close by. If you are trying to save money --

THE COURT: What motive would he have to conceal the fact that he had people? I mean, I am just curious.

MR. AUERBACH: That is right. The point is this, your Honor: I think that this was all part of the charade. I think he was driving the cost of production up. In other words, I think that this whole bit --

THE COURT: What would be the advantage of driving the cost of production up? Why would he want to do this?

MR. AUERBACH: This is the whole gist of his testimony, because here we have this multimillion dollar liability that he wants to get rid of. Well, that is what this whole case is about. Now, he's got to have something really plausible. He's got to say --

THE COURT: I see.

MR. AUERBACH: -- you guys forced us out of business. And also, the whole gist of his testimony is we are way up, whereas the testimony that has really not been

controverted by all the union officials who had access to the international, officials like Mr. Fisher and Mr. Garber, who had access to all the different production costs all over, was that there was no major difference.

THE COURT: No, no. No, no, your expert witness, after he got all through testifying about the different production costs, said it absolutely was meaningless as to production costs. And he said things going on exactly like he described could have changed the picture. My recollection was 180 per cent.

MR. AUERBACH: Right.

THE COURT: So I did not see why Mr. Moss did not move to strike his testimony after that answer, because that answer, to my way of thinking, torpedoed his entire testimony. That was in answer to your question.

MR. AUERBACH: Okay.

THE COURT: So you have not got a scintella of evidence in this record in light of that answer as to what the production cost was in any other plant.

MR. AUERBACH: Okay. But the only point that I am trying to make is this: that this witness or, that is, the company management was trying to drive their costs --

THE COURT: I see your point now. I did not see it before.

THE WITNESS: The Strong-~~Norwich~~ Narovec report gives you an answer to that because we can go back five years and see the cost per man hour per pound has even gone down instead of up. So that would have happened only the six, seven months before the strike.

Take the Strong-~~Norwich~~ Narovec report and see what happened the last five years and that gives you the answer; it was the same or even worse.

Q Well, now, if we want to talk about the Strong-Narvoec Report, Mr. Clairmont, isn't there a correlation between the decreasing production and the increasing cost per pound?

A Yes, it is. But if you look at just wages and premiums, you will see there isn't much change in the last five years.

Whether the company made 4,000,000 pounds or 2 1/2, the cost was practically--labor alone causes that depending only on production. That has nothing to do with how much you produce because, you see, the total cost is made out of two figures: You see, a figure going--which will vary all over the lot in relation to production, but you see something else. Pounds of rubber produced per man hour.

That has nothing to do with whether you make one tire a day or 10,000 tires daily. How many pounds of rubber does a man in his work produce an hour?

And you see that in '59 a man produced 31.22 pounds and five years later instead of making 30 pounds per hour, a man should have made 40 pounds an hour.

If you put in higher speed machines, automatic devices, the production per man hour is getting down to 25 pounds-from 31 to 28, then to 20, then to 30, then to 25. In other

words, you see that the production of a man, how much he makes with his hands in one hour, which has nothing to do with how much you produce.

You also see that wages and fringes have gone from $1.00 to--per man hour, from 10 cents to 15 cents. Well, put the two together. Even a child that knows very little about economics or arithmetic would be able to see that production is going down. I mean by leaps and bounds, will go down, while it costs per man hour or production--

Q Well--

A Just a minute. I'm not through.

Will you please go now--because this is something that somebody has to interpret correctly--

Q I just want to stick in one little question here.

A Yes.

Q Weren't you operating with the same union and the same company from this time, during this time when your production costs were going up, the same contract?

A Yes, the same contract, but labor was producing less and less.

Q Well, who directs labor?

A Labor directed itself in this particular plant.

Q What stopped management from directing the labor?

THE COURT: He testified at great length--

A I said that management never interfered and never fought for its rights to increase productivity while all its competitors did.

Q Let's take on the Strong-Narovec report, would you turn to the last page?

A Yes.

Q You see the statement, "Until such a time as the sales volume is increased substantially, however, the effect of cost reductions and productivity increases, although it is unquestionably of great importance, will only be a reduction in the current amount of monthly losses."

A Where are you reading, please?

Q The last page, page 5.

A Yes.

THE COURT: What is the number of this?

MR. TAYLOR: This is No. 40, your Honor.

THE COURT: 40?

MR. TAYLOR: Regular 40.

THE COURT: What page are you on?

MR. AUERBACH: Page 5, your Honor, near the top of the page. We start at the right side where it says--

THE COURT: That is the last page?

MR. AUERBACH: Yes. "Until such a time as the

sales volume is increased substantially, however, the effect of cost reductions and productivity increases, although unquestionably of great importance, will only be a reduction in the current amount of monthly losses."

THE WITNESS: O.K. What does that mean? That exactly supports what I was telling the union, that until we can sell more there cannot be any reduction.

It qualifies this. "Until such time as the sales volume is increased substantially, however, the effect of cost reductions and productivity increases, although unquestionably of great importance"--He says this himself, it's of great importance--"will only be a reduction in the current amount of monthly losses."

But I want to ask you, how do you go and have sales unless you have costs? Nobody seems to answer this or ask this question.

Sure, its very easy to say Go and increase sales like we didn't want to increase sales, but to increase sales means to have costs.

What comes first? First I must have a cost that enables me to sell. Will you go buy in a store something and pay $10 for it when you can buy it for $7?

Will that store that sells it for 10 expect to have sales? The two things are one and the same.

Q You are saying that, if I understand you correctly that the total problem with the high production costs was purely in the union contract and nothing to do in 1963 with management?

A Nothing to do with management after we took over.

Maybe before, yes, because you have a lackadaisical uninterested management, but we had a lot of money in it and we were trying our best to make a go of this company, and therefore, we did everything that we could to control it but there was something we couldn't control, which we had a problem, and that was the union, and in that area we did not get any cooperation on their part.

Q All right. Now, at the beginning, did your contract provide for any job evaluation program, the one that was in effect in 1962?

A No.

Q It didn't provide for anything that would permit you to do anything?

A No.

Q Do you have a management's rights clause in there? May I see it?

A There's nothing that we can't make a job evaluation change, incentives, and all of that.

MR. AUERBACH: Number 35, your Honor.

THE COURT: Wouldn't it be Exhibit 1 annexed to the complaint?

MR. TAYLOR: That was, I believe, the Youngstown agreement, your Honor. The Conshohocken is what we are talking about, and that would be number 35, regular 35.

THE COURT: Right. There is nothing which has a heading which suggests this.

MR. AUERBACH: I call your Honor's attention to the page, page 10 Section 8.07, ~~which~~ which says:

"Upon the introduction of any new item into production, or the ~~re-establishing~~ re-establishing of an operation that has been previously discontinued, or where it is necessary to change the method, machinery, tools, materials, designs, or production conditions for an item, and the elements or factors of time, material, mechanical device, or work performance, are extensively rearranged, the piecework rate shall be arrived at by the use of present time study practices. When it is necessary to make such changes or establish new rates, the established relationship between earnings and effort will be maintained."

THE WITNESS: They are talking about apples and oranges here.

THE COURT: What did you say?

THE WITNESS: We are talking about apples and

oranges here. This is a completely different kind of situation than that clause describes and is not to a general job evaluation on things we were doing.

We didn't ask when we ~~changes~~ changed substantially or made a big change; we asked on what were we making then. This clause has nothing to do with job evaluation or re-establishing new incentives or what we were doing then.

Q Wasn't this part of the poor management that had come about b ecause of, as you said, the non-existent management? Couldn't the job be rearranged by efficient management?

A If the management would have been not efficient but fought for its normal rights--

Q I'm talking about after you came in in 1962.

A I misunderstood your question.

Q You had had bad management before you came in?

A Yes.

Q Now, you came in and you got a good track record of efficient management; couldn't the management under Mr. Clairmont--you are not a time study man, of course, but you are a chief executive--couldn't you have rearranged, couldn't you have had a time study man come in to study the jobs and see h ow they could be improved?

MR. MOSS: Your Honor, if that question is

addressed to Section 807 of the contract--

THE WITNESS: Not unless the union agreed to it. We had no clause in the contract that permitted us to do so. That's exactly what we are fighting to get into the contract.

Q Well-

A In order to able to do so--

THE COURT: Are you suggesting that this clause gives him the right to make time studies of the whole plant?

MR. AUERBACH: No. The first thing that I am trying to get at, your Honor, is that he has presented a picture of inefficient operations. Part of efficient management, I'm sure the court will take judicial notice of, is that every once in awhile you've got to come in and say "This job is being done wrong."

THE WITNESS: It was not being done wrong. I'm sorry. I didn't say that the jobs were being done wrong. I said that the man did his job, or the men did their jobs, but instead of making 20 units an hour, they made 10. That's all I'm trying to say. They took their time. They didn't have to work hard because the incentives have been set and they could make $3.10 an hour even if other people did the work in other plants, so we had to rearrange the incentives in order to make them make their 3.10 or 3.50.

Q Well, now, I would like you to go to Section 801,

if you have it handy.

A I don't have it.

Q I will read it to you. You are undoubtedly familiar with it.

"The company and the union recognize that a high level of wages can be maintained only by maintaining a high level of productivity. The union agrees to cooperate with management to obtain the best productivity possible, which is consistent with fair and reasonable labor practices. The union will support management's efforts to improve production, establish efficient methods, eliminate waste, conserve materials and supplies, and improve the quality of the workmanship."

Now, taking this 801, and taking the 807, did your management make any revision of jobs in the period from the time you got in in 1972--1962, that is, when you became controlling director, until June 30, 1963?

MR. MOSS: Your Honor, I object to this question. There isn't anything in the evidence at all which shows that any of the conditions of Section 807 were reached or were present.

THE COURT: I will strike from the question the reference to these two contracts. It has nothing to do with the question.

THE WITNESS: I could answer that if I'm permitted

to.

I don't know how many times this last declaration of pious intention and relying on that they will cooperate, how many times I called the union's attention to that.

I said, "You said yourself that you recognize the principle." That was just falling like water over a dock. I mean, I referred to that particular thing many times. It was a very nice declaration of intention but it never was done.

THE COURT: Read back the question and see if you can answer it. You both have this habit of summing up in your statements, and the witness doesn't know what is being asked. Just ask for the information you want and leave out the preambles.

MR. AUERBACH: All right. I will rephrase the question, your Honor.

Q Can you tell us what steps, if any, your management took in approximately the one year that you were in operation under your control before June 30, 1963 to make your production more efficient?

A In order to do that you would have to establish new incentives rates. Let's say that the man made six cents or he was paid six cents per each tire, if a man was paid, for argument, eight cents for each tire cured, the

more tires he cured the more they will make.

If you will cure 40 tires, you will make eight cents times 40 or $3.20.

For us to change this incentive rate was impossible. It won't have been within the contract because the contract said only if you change machinery, only if you make a new product and something which--to remember which there is no previous raise being put, then you can make a time study and set up a new rate, but we could not think of these things without violating the contract.

The time study attempts that have been made met with tremendous upheaval on the part of the union and which Mr. Barkett made, he made a few timid attempts to establishing originally production or change of rate from straight hourly to this. He said "Hands off the union." And we could not do it unless we had the clause that gives us the right to do it.

Q Are you telling us that, Mr. Clairmont, when you came in, with whoever you brought with you as your subordinate management, that you could not find any jobs or work patterns, or work flows that you could improve? I'm not talking now about incentives; I'm talking about any kind of rearrangement of the factory.

A The factory was well laid out for decent cost of

production. We didn't have to put in much new machinery to make it. It was a question that we had to make jobs.

There were three things: a number of jobs to be changed from hourly rate where we paid the same price no matter how much a man produced and put it on a piece-work basis. That was one category of things we had to do.

Number two, we had to make a job evaluation so a man would be paid in relation to the skill, responsibility and all other factors that come within the intent of a job.

We had people that were participating, that were getting more per hour than a skilled tire man, who were sweeping the floor, maybe, and things like that, because it so happened that it was left to drift like that.

The third thing was to see that if a man makes 3.50 an hour on a certain operation, he will produce a certain number of units, that he is able to produce in order to make the 3.50.

All of these things we could not tinker with under the provision of our contract unless we had a free hand to do it, and of course it's not done by Mr. Clairmont coming in and saying "Do this." This is done by time studies, people with a stop watch, who go and compare. They allow so much for a certain percentage of time done on a very scientific basis as a result of studies and that is exactly

what we intended to do. Like all other companies have been doing, it was nothing abnormal. Every other company has been doing it. We came 50 minutes late trying to do it when everybody else had been doing it a long time ago, and obtained a productivity that a human being can give on a certain operation on a certain amount of time.

Q But you didn't answer my question. I would still like a direct answer to my question, Mr. Clairmont.

A I think it is. I thought it is.

Q I want to make sure it is answered. After all these years of inefficient management, are you telling us that you and your new subordinates couldn't find any changes to make in the work flow, work production, job contents, material handling, or anything like that?

A In relation to production?

Q Yes.

A They probably did a few--I was not in charge of manufacturing, but whatever the few things that had to be done, probably were done because Mr. Barkett was a very experienced man, but they were not very important because the plant had already been laid out.

A brand new building had been built on one floor within the last couple of years. In other words, only management could do anything by our analysis to pinpoint

where the trouble was and try to solve this problem, but it took two to solve the problem; we, that is management, and the union. We pinpointed what was the main reason what was the cancer of Lee, and that was--and the Lee ~~predictivity~~ productivity that has been allowed to develop throughout the years and which nobody ever tried to change.

Q But you don't, yourself, know whether there was any change in job content, job flow, or anything of the sort?

A No.

MR. AUERBACH: All right.

THE WITNESS: It would have been very unimportant.

THE COURT: His answer, as I understand it, is that he assumes that the factory manager that he put there, an effective man, did what he could to improve the routine of the factory but he thought it was irrelevant because what had to be done was to change productivity and that he could not do without the union.

MR. AUERBACH: Again I would like to point out to Your Honor that I would find it incredible, submit that it is incredible that a man who is so desperately trying to improve efficiency would not have gotten some kind of a report.

THE COURT: I don't think that that is incredible

at all.

MR. AUERBACH: If you take a plant, going on his assumption that you had the poorest management, the non-existant management there, in a plant for a period of years, that good management could not come in and make some re-arrangements in the place.

THE COURT: So he has testified that the arrangements that he observed were correct.

THE WITNESS: They were very good.

THE COURT: And he has testified that he put what he considered a competent manager into his plant.

THE WITNESS: I think that there were a few--

THE COURT: And assumes that that competent manager made whatever changes he could.

MR. AUERBACH: But could you have an incompetent management that had a beautifully and efficiently laid out plant with all the jobs being worked properly?

THE COURT: He said he did exactly that.

THE WITNESS: It had been done before because it is something the union didn't have anything to say about, and the management could do before. As a matter of fact, as I recollect, there were a few arrangements of machinery being made, some tire-building machines which have been made from one floor to another to be closer to the--re-arrangement

of machinery, tire-building machines that have been moved to be a little closer to the foreman, to have less space to walk from one place and small things like that. Whatever we could do, we did.

Q You mentioned before that the previous management had spent a lot of money for equipment and you had the plant modernized; do you recall anything about a tread-tuber?

A Yes, I think I do.

Q And in point of fact, do you know how much that tread-tuber cost?

A No, I don't know. I don't remember that.

Q Do you know whether it was an expensive item of equipment?

A I couldn't remember offhand.

Q You can't remember?

A No.

THE COURT: When did you get out of the company, just for curiosity?

THE WITNESS: When we sold out my interest in Lee?

THE COURT: Yes.

THE WITNESS: It must have been '68 or '69.

Q Do you know whether the tread-tuber was connected during the period of your management?

A Connected?

Q Yes. Was it in operation?

A I don't remember that.

THE COURT: You said you don't remember it?

THE WITNESS: No, I don't.

Q If I told you that the tread-tuber was an expensive piece of equipment, which was not in operation during the period that you had it, and then it was part of the plant that was sold to Goodyear who then put it into operation, would that refresh your recollection or would you disagree with me?

A No. I did not actually go into all of these fine points of manufacturing. I have many other things to do, sir.

Q But you say that this is a fine point. Do you consider an expensive piece of equipment lying around unhooked a fine point that you could not ~~both~~ bother with?

MR. MOSS: Your Honor, I object to that question. The witness says he doesn't remember anything about it.

A I wouldn't know because I'm not a tire-manufacturer and I am not familiar with every process of manufacturing to know all the fine points of tire manufacturing.

Q What I would like to ask you, then, is, how far did you go to satisfy yourself as an experienced--how far did you go to satisfy yourself that at least in so far as

management was concerned, you were getting all of the efficiency that could be gotten?

A In the first place, I hired a man that had an extremely good reputation and was recognized as a very, very good manufacturer, a man coming with very high credentials, coming from a very good school, from Goodrich and Mansfield, who knew their manufacturing, what they were doing, so I know I'm not getting a man from a third-class operation but from first-class experience, with 25 years of experience, that can show us what other people are doing that we are not doing.

You always rely on management, any chief executive has to rely on his key man. All he can hope to hire is the proper key man, whether it is in sales, manufacturing, or any other important operation, advertising or whatever have you.

You have to delegate authority to them and expect them to do what has to be done, because you know that they will be running a successful operation where they have been before.

I could not be expected to know; neither did Mr. Garthwaite or any chief executive know about every manufacturing process in their plant.

I'm sure the president of General Motors doesn't

know a damn thing about machinery connected and whatever. It happens in every plant.

But I was satisfied that I have pointed out the main trouble of the losses because the arithmetic of the thing, as I tried to explain to you, showed that there was a difference of 2 1/2 to $3,000,000 a year right there.

THE COURT: That's going back a bit.

THE WITNESS: Yes. I say I was convinced and it would not have have made a b it of difference whether it was connected or not. Maybe it would have picked up $10,000, but I had to address my mind to the crux of the problem without which nothing else would have helped.

THE COURT: The answer to Mr. Auerbach's question, I gather, your answer to his question: What did you do to see that the manufacturing was tightened up as best as it could be? You say you hired a man you thought would do that?

THE WITNESS: I was satisfied because we had other people go through our plant and they told us it's perfectly okay. In other words, Mr. Barkett was not the first man I hired. I negotiated with three, four, five men before that who did not want to come and all went through the plant, all looked at it and said "No. You have a good arrangement, good machinery, and everything is all right." I had sort of a consensus of various people, competent people, that I was

trying to hire that were employed in other manufacturing plants that, after inspecting the plant, looking over the job that I suggested to them, told me "No, you are okay from the point of view of your plant, equipment, and everything else."

Q Did you get any specific reports from your experts as to what tney were doing to tighten up efficiency?

MR. MOSS: Your Honor, I don't wish to interrupt Mr. Auerbach's examination but we have been here since lunch, for an hour and 20 minutes, and it seems to me that we have not addressed ourselves to the issue in the case at all.

THE COURT: He is addressing himself to it in his way, so overruled.

I think he has told you that he got no reports. He put a man in whom he thought was competent to do the job and let him do it.

THE WITNESS: Not only that, but he was telling me "I can do this job if you will deliver to me the union's cooperation. I will do the job that I have to do and I will give you the cost you want." That's what the man told me and the chief executive of any company takes it in the order of their priority. This had a number one priority. Without it all the other things were useless.

MR. AUERBACH: I think this is a crucial aspect, your Honor.

THE WITNESS: May I, Mr. Auerbach, just add to what I had to say in order to better outline what you asked me.

Mr. ~~Backett~~ Barkett in one of these sessions, negotiation sessions, said the following to the union committee--

Q Will you tell us what date that was, Mr. Clairmont?

A I'm not talking; he's talking.

Q I just want to know the date.

A 5/29/63, while we were negotiating before the strike.

Q Can you hold it just a minute? We want to find it.

A There is a negotiating session with the union--

MR. MOSS: What is the number of the exhibit?

MR. TAYLOR: That would be 99 through 102.

THE COURT: Have you got the union's exhibits?

MR. TAYLOR: I don't know what he has there.

THE WITNESS: It says "Contract Negotiations:"

MR. AUERBACH: May we see it?

MR. TAYLOR: Yes. This would be 99, your Honor. It would be 99-A.

THE COURT: 99-A.

MR. TAYLOR: Just hold it a moment.

THE COURT: You are reading from what page?

THE WITNESS: I am reading from the Negotiation session where Mr. ~~Backett~~ Barkett, which was the new man that came in, was addressing the people on the committee.

THE COURT: The first page, is it?

THE WITNESS: Page 2, at the bottom of page 2.

THE COURT: Oh, I see. Productivity Per Employee.

THE WITNESS: Right. That was an experienced man that had experience in any number of other tire plants.

He says: "Productivity at Lee is low. Average wages in '59 was $3.168. We have new equipment but productivity didn't increase near enough. We don't have near enough jobs on piecework. Average wage for '63 is $3.746." Inother words, about ~~20~~ 60 cents more than '59. Off standards is hurting us plenty. We know that treads is one of our biggest problems."

The tread is the outer part of the tire.

"But ~~the~~ you people should receive only an allowance for the short tread, not the whole tire and not the 100% guarantee. ~~He~~ You should only receive an allowance for the part that is off standard." They were asking to be paid for the ~~white~~ whole tire, which there was no rhyme or reason for it. "We need the cooperation of all the employees. You people must

produce more for your $24 a day."

"The base there at Lee," which was the base without incentive, "is $2.437 and this is 50 to 60 cents higher than other plants our size. But the most discouraging thing in this plant is plant ~~white~~ wide seniority. This will and must be corrected so that we are able to keep ~~experience~~ experienced men on the job. We have trained three times as many tire-builders than we should have," and so forth and so on.

Here is what the man that was in charge of things that you are asking me about said, what was the sum of his conclusions.

(Continued on next page.)

Q No, that is not what I asked you. Mr. Clairmont, what I asked you about is: did you get any reports from your manufacturing people as to what they had done to improve the efficiency by changing jobs, by changing work flows, by using new equipment, any of these things that you could do as management without any serious interference from the union? I am not talking about job evaluation, I am talking about all of the things that you could have done -- I say "you," I mean management could have done -- and that you cannot ask the union to do. They are not management. Did you get any reports from these people?

A I was talking constantly to these people. Whether I have written reports or not, we knew that the plant is well arranged. The few little re-arrangements we have to do were of such minor nature, and we did them.

I remember that we re-arranged some tire building machines to make them a little closer to the machines from where they had to be brought. But the plant had already been arranged and put in top -- to be an efficient producer from the point of your plant arrangement, job flow.

Q Who made this plant efficient?

A We bought -- how do you make a plant efficient? By having the latest type of equipment, and by arranging the machinery and the sequence in which it has to be arranged.

That is all there is to it. Now, when we put automatic machines --

Q Is that all there is to it?

A That's basically -- there is a thousand things to it, but I'm citing the prime things.

Q How about setting the jobs up so that they are performed efficiently?

A You couldn't do that. That's exactly what I'm talking about. You couldn't do that without the ~~unit~~ union. You could not tinker with jobs without the ~~unit~~ union.

Q Mr. Clairmont --

A That's the whole proposition here.

Q -- let me ask you a question.

When you bring in to a plant a million dollars worth of new equipment, doesn't that by itself create jobs? It may eliminate jobs, but doesn't that make new jobs?

A No, sir. Let me explain that, if I may, because you yourself do not seem to be very conversant with how things like that work, with all due respect.

You buy a new automatic curing press, right? That press does a lot of automatic operations that before had to be done by hand.

Q Yes.

A Which means that a man on an old machine could pro-

duce 25 tires. On the new curing press, that takes much of the work he had to do before, due to automatic gadgets; he can cure 40. We put this new curing presses but we didn't get the benefit of all of that. That was wasted money.

Q Was the job changed when you had the new machinery in?

A The job was always changed because the people had to do much less work on that, much less than before.

Q If the job was changed, wouldn't that be covered by Section 8.07?

A No, because we could have; yes, we should have and could have, but when thepeople didn't want to work harder and we gave in, nobody ever opposed that.

THE COURT: Wait a minute. These things were all there wehn the witness bought the plant.

Q Were there any new jobs created or changed after you came into the picture?

A No.

Q Not a one?

A No, because there was no reason. We could have done it. We could have changed the job; in other words, tell the man, "Now, willyou please go and produce 40 because other people produced 40?" But we couldn't do that without the union's agreement or without having a new study made, because

they'll say to us, "By what rhyme or reason did you set up an incentive to produce 40? Did you make a time study? No."

That 's exactly why we wanted to have the study, to have the evidence that it can be done on that basis. When I offered to take them to another plant to see just by mere visualizing and looking at it, they refused to go.

Q And you are telling us that you and your advisors could not find any way to change any of the jobs so that you could get them under 8.07?

A No --

THE COURT: 8.07 on its face does not call for that. 'By the introduction of new items of production." There is no evidence --

MR. AUERBACH: Your Honor, it also says, "Extensively re-arranged." All they had to do, your Honor --

THE COURT: Let's be reasonable. Supposing you are the union lawyer and supposing on this contract, coming into an existing thing with no new machinery, no nothing, he used this section as a way of putting in time studies?

MR. AUERBACH: I am not talking about generally, your Honor.

THE COURT: What are you talking about?

MR. AUERBACH: Some of the equipment had been brought in.

Q When was the last piece of equipment brought in?

A We didn't put in any new equipment. We are trying to utilize efficiently the one we already have.

Q When was the last piece of equipment, to your knowledge, brought in, whether it was by your management or the previous?

A I do not know, but we didn't bring in new equipment after we came in. I don't know when it was, the last piece.

MR. AUERBACH: I submit, your Honor, that it is incredible in the whole plant like that, with all the --

THE COURT: You are just pettifogging. The witness testified three times that he hired this man who --

MR. AUERBACH: Barkett.

THE COURT: -- Barkett, who reviewed the plant and told him it was in proper working condition as far as plant arrangement is concerned.

He previously testified that four other candidates for the same job reviewed the plant and told him it was in proper working condition. You tell me that is incredible. Then you have got to call those people and have them say they did not say that, because there is nothing incredible to me that four people should have said that.

MR. AUERBACH: No, it is not incredible that four

people should have said it, your Honor. It is incredible to have had the most inefficient non-existent management to set up a plant --

THE COURT: He has said, whether it is true or note, the trouble with this plant was that managment, for a period of 20 years or more, or less, had never stood up to the union and that they had impossible union working conditions.

MR. AUERBACH: But he also said he had non-existent management. The people did not pay attention. He had a bunch of --

THE COURT: There is nothing incredible about a management that is perfectly competent to do what comes easily, perfectly competent to put in machinery, perfectly competent to do things, but will not put a fight up. That is what he said.

THE WITNESS: That's exactly what I said.

THE COURT: There is nothing incredible as a matter of law about that situation. If you can call witnesses and say it is not true --

THE WITNESS: To buy machinery, there's no trouble about that, but trying to make the union work on that machinery to produce, it was terrible, there was upheavel that you didn't want to hear about.

THE COURT: Off the record.

(Discussion off the record.)

Q You never saw the tread tuber or knew that it was a tread tuber, and you never saw --

A The word "tread tuber" rings a ~~bill~~ bell. What happened to it, I don't know.

Q You do not recall in all your trips through the plant seeing any piece of equipment, a new piece of equipment, that was not in operation?

A I don't remember exactly. I know there were presses and things. There was something new coming in, but what it was, I'll be so vague that my testimony wouldn't mean anything.about it.

Q Let's get back a moment to the sale. You said you kept people on because you did not want to lay them off, because you might get orders.

MR. MOSS: Your Honor, I think Mr. Auerbach misspoke. He said, "Let's get back to the sale."

MR. AUERBACH: No, I said, "sales."

MR. MOSS: Sales. I see.

THE COURT: Selling tires, not selling the plant.

MR. AUERBACH: Yes, sales.

Q You said that you did not want to lay people off because you were hoping if orders came in you wanted to

have the people there?

A I did not say that. I may explain what I said?

Q Sure.

A I said if it was necessary to lay a man off for two days and recall him maybe two days later, that was the anticipation, but probably we would not have done it, to go through the red tape of laying him off, recall him and go through seniority and all of those procedures we had.

But if we knew that we do not need -- that sales have come to a level that we don't need 50 people in the plant because there is no expectation or immediate expectation that we will need them, then we'll lay them off. It was a matter of judgment of the manufacturing people. It is something that is temporary for a day because he is out of work. Or is it something that may last a month? That was just judgment.

Q Did you have expectation of getting orders in?

A Some maybe we did because I told you I was negotiating with various people, hoping one of them will be landed. We landed one big account at a very substantial loss just to keep the plant going and keep the operation alive.

THE COURT: The Pep Boys account was a loss account?

THE WITNESS: Yes. That was a big contract.

Q When you got the Pep Boys order, you said it was a

substantial order?

A Yes.

Q Was it a continuing order or was it a one-shot order?

A No, we were supposed to become one of their continuous suppliers.

Q Well, when you would get an order, if you got orders like that in, you would, in any event, have to call people back, would you not?

A We had enough people. If we wouldn't have gotten that order we would have had to lay more off.

Q You said you took that one at a loss?

A Yes.

Q Were you prepared to take other accounts at a loss?

A Yes. In anticipation that having at least the sales, we'll be able to go to the union and now we can keep the plant busy, we can recall people. Do you share to cut the losses? We cannot go on forever. We will lose five, six, seven months a year, but not forever.

It was done in the hope and anticipation that when the time will come to negotiate the contract, the union will recognize the efforts we made, and they were aware of the sales picture of Lee, that they will say, "All right, we have

work, we can keep busy, we can have our jobs, we will do our share."

I was banking on the cooperation of the union. I never expected to find this ~~adament~~ adamant of an attitude.

Q Didn't you say before that you could not put on a push for sales because your cost of production was so high?

A So I decided that we will take a certain amount of work even at a loss to keep the plant busy and to show the union we are making our part of the sacrifice operating at a loss, but we expect them to do their share.

Q Then couldn't you have gotten other business the same way?

A Sure I could have kept the plant busy 24 hours a day and lose $10 million in one year. All I had to sell is a tire 50 cents less than my competition and probably I could have gotten all the business. The capital of the company would have been exhausted, probably, in a couple of years on that basis.

Q Would you turn to the Strong-Narovec report with me, the last page, Mr. Clairmont?

THE COURT: Number what again?

MR. TAYLOR: 44, your Honor. My apologies, 40.

THE COURT: 40?

MR. TAYLOR: 40 regular. A well traveled document.

A Yes?

THE COURT: Incidentally, Mr. Auerbach, we have committed ourselves to 4:30 and I assume that means 4:30 by normal people's time. That clock is 10 minutes slow.

MR. AUERBACH: My watch is broken.

THE COURT: Just assume that clock is 10 minutes slow.

MR. AUERBACH: We cannot assume it because apparently the stenographer last week, or somebody last week, corrected it and then it went back.

THE COURT: It keeps losing time. I do not think it will lose more than 10 minutes between now and 4:30.

Q I would like you to take the last two columns on that cost and production analysis.

THE COURT: That is the appendix in the report?

Q From March to April 1963 -- I do not know when you got your Pep Boys order, or whatever it was, but -- you increased your production from 1,061,000 -- I will leave out the hundreds -- to 1,357,000 pounds. And if you look at item 5, your conversion cost went from .3914 cents to .3194 cents. That is approximately 8 cents per pound with just that 300,000 increase.

And at the same time, if we look at item 3A, pounds per man hour, your pounds per man hour went up from

23.21 to 26.83. Now --

A What is the figure? Because the photocopy, my photocopy, is not clear.

Q I will give you one that is a little more legible.

A May I have a copy?

Thank you.

What is your question, please?

Q Have you found the particular items that I have reference to?

A Yes.

Q I will repeat it because you did not have that with you. From March 1963 to April 1963, you moved up your production approximately one-third?

A Yes.

THE COURT: With the Pep Boys contract?

THE WITNESS: No, production went up in April because we lost some other people or some warehouse. It was not only Pep Boy that was influencing the production but whether we closed some warehouses that were losing money, whether we lost other clients, whether we added other clients.

Q At any rate, you scheduled a higher production.

Now, you went up, in rough figures, approximately, you increased your production one-third and, in that modest increase, you notice that on line 3A your pounds per man hour

went up from 23,21 to 26.83 and at the same time on line 5 your conversion cost per pound went down from 39 cents -- well, .3914 cents to point -- I am sorry. First it was .3914 to .3194.

A Well, to show you what little relationship there is in this conversion cost per pound, it has absolutely no relationship because you cannot see that in January. We produce a million-five, and where the cost of ~~conversion~~ converting ~~power~~ rubber is 33.57, you look at January "63, right? We produced a million-five.

Q All right. Look at February 1963.

A No, no. Let me give an example to show that the total conversion pound cost has no bearing in relation to production. If you look at January '73,you see a million-five pounds produced, right? Yet the cost of conversion is higher on a million-five than on a million-three.

To show you the fallacy of trying to relate the conversion cost of pounds to production.

But what you can look at, which is what interests us, is that pounds per man hour; that is what you should look at. This is productivity. This has nothing to do with the overhead, nothing to do -- how much does a man produce in an hour? Which has nothing to do with sales or overhead. The only thing that counts is the 38 pounds per man hour.

Q Aren't the conversion costs an item, too?

A Yes, but the conversion costs are a fixed overhead. If we had to hit the --

Q Ah, what did you say, fixed overhead?

A A fixed overhead. In other words, the 33 or 36 pounds are due partly to manufacturing costs, which is labor content, which is about, as you can see, 16, 15, 17 cents per hour, and the rest is overhead.

You can't blame anything on that part which is above thel6 cents. You cannot say, "Management, there is more production they can get." But the 15, 16 cents fixed labor, which is only wages and which is related to production, where our cost was doubled in competition.

Because I can show you, if you look at another page, that no matter what the production cost was, the labor content cost was the same.

Q Well, now --

A Let me give you the best example. We produced in January 2,400,000, right? 2,447,000.

Q I do not see that. I see 1,500,000.

A Look at the December one, right? December 1962.

Q Yes.

A Okay?

Q Didn't you have holidays there?

A It doesn't matter. Look at the total pounds produced.

Q Wait a minute. Don't you have Christmas in that time? I do not know what was the custom in your plant, but isn't it your general experience that December is not the most efficient month?

A I'm not talking of efficiency now. I am talking of pounds produced. It has nothing to do with efficiency or what. I say we still produced in December, in rough figures, 2,300,000 pounds, 2,288,000. We produced in April about half of that, a million-three hundred-fifty-seven. About 55 per cent, right?

Q Yes. But if you look at --

THE COURT: Let him finish what he is saying.

A Will you please? Take the figure of December, 2,288,000; April, 1,357,000, almost half of it. At the best, 60 per cent of it. Yet your pounds per man hour did not change. So you cannot tell me that the more production there is the better production per man hour.

To show there is no relationship, you cannot produce a million pounds or five million pounds -- what the man does in an hour production has nothing to do with your sales or production. It is your best illustration right here. That has -- there is no relationship. You are trying to

show me that there is a relationship.

THE COURT: You made your point. Now let him question you.

Q You have your pounds per man hour --

A About the same, 26. -- the pounds per man hour produced in December was 26.89, and April about the same, 26.83. In spite of the fact that December production was about double that of April, just to show that there's no relationship between higher production and the production per man hour. And you can apply that any place you want and you will find it to be true.

Q All right. Let us go to January. If you go from December to Januar,, in December you had close to 2,300,000 pounds, and your pounds per man hour was 26.89, and then in January you drop down to a million-and-a-half pounds, your pounds per man hour was 23.82.

A Exactly what I'm trying to say. What does that mean? In January they worked a little harder and probably made higher wages. If a man would work harder we would have a better production, irrespective of the total production.

Q Are you saying that the men worked harder in --

A The varies of a man's work will be different from day to day, from week to week, from year to year or month to month. If a man worked a little harder he made a little

more money. The chances are that the same man that made $3.20 in December producing a little more or working a little harder probably made 3.70 in January. Wherever they are on piece rates. It depends on the fluctuation, how much they produced in an hour. And that really is the whole crux of this discussion.

Q But in December 1962, Mr. Clairmont, didn't you have almost 85,000 man hours? You had more people working as opposed to January when you had 63,000.

A The number of man hours doesn't mean anything. You could have 200,000 man hours and produce less than in 150 if the people are working in a more ~~lazed~~ relaxed way.

Q These we have the figures for and these are your figures, are they not?

A They are the figures of Strong-Narovec that they took from all the production that were available and put together.

Q They were from your company's records?

A Absolutely, which were kept day by day.

Q Do you have any records or reports from your management people that during those months or certain months the people worked harder than others?

A There is no record to show that.

Q I am talking about reports.

A Reports, there's no reports to show that. There's the payroll that shows that. Probably the people having produced more probably made more than the people who were on piece rates during that month because the more they produced the more they made.

I would like to call your attention, however, to another figure that is very important.

MR. AUERBACH: Your Honor, I do not know whether it is a motion, but the suppositions that the witness is making,I would like to call your Honor's attention, is merely suppositions.

THE COURT: That is clear.

MR. AUERBACH: Okay.

A In interpreting this report, one has to look at the pure labor cost without being influenced by overhead. And then you can make what I will call a proper comparison. And you can look, which is even more symptomatic -- let's look what has happened before I was in management.

In 1961 --

Q What page are you reading from?

A Also on the last page.

Q Okay.

A -- 1960, '61, '62, before I was associated with this operation, the monthly average production was 4 million

pounds. The first column, you see it? 4 million pounds. And the pounds per man hour produced was 29, right? Now, you look, November '62, when we fell from 4 million to 2 million 447.

In other words, about 60 per cent of the previous production in previous years. And the pounds per man hour is practically unchanged, 28.91, which means that the fact that we produce more had no bearing on the production per man hour. That had to do with the people themselves, how hard are they working to produce the maximum that the man can produce in an hour.

Q Do you have any reports from anybody in writing that supports your contention that the people were working harder?

A Well, probably, I guess, if you go to the payroll you will find that the same people made more weekly --

THE COURT: The answer to his question is no.

A -- but if you -- the only way to see that, if you take the payroll for the next month, you will probably see they took more home at the end of the week than they took in the previous month, because they were producing more.

THE COURT: But you are just speculating?

THE WITNESS: Yes. That would be the only way to show it.

THE COURT: The question is no one ever made you a report to show this? The obvious ansswer to that is no.

THE WITNESS: And if they had made me reports that's ten years ago; they must be somewhere in the company's files.

Q If we can come for a moment more to the Strong-Narovich report, are there any indirect costs in any way affected there?

A No. Conversion cost does not have any indirect cost. It has no salaries, no administrative, no selling expenses, no management expenses, nothing. Conversion cost means only manufacturing costs.

Q What about supervision -- immediate, direct supervision?

A I don't know what you call immediate, direct supervision.

Q I mean foremen.

A That would be there.

Q Foremen are part of management, are they not?

A They are part of production supervisor.

Q Foremen don't belong to the union?

A No, they don't belong to the union.

Q Their compensation is fixed solely by management?

A That's right.

Q Their activities are controlled solely by management?

A Yes. And by the provisions of the union contract. They cannot do anything in supervising the job against the union provisions in the contract.

Q Outside of the fact they cannot do direct work at the machines themselves, what's there in the contract that governs the activities of the foreman?

A He may want to tell a man that he can produce more, or do this and that, but that's against -- if you do anything that a union or a worker would interpret in conflict of the contract they call for a grievance right away. That's how grievances start.

Q All right, they file a grievance. Now, you were in control of the management for the last year of the contract. The mere fact that a union files a grievance, does the management have to lay down and play dead?

A The minute the union files a grievance you have to go through the grievance and arbitration proceeding.

Q That is done every plant, whether they have a good or bad contract, isn't it?

A Yes. I say the foreman's activities are limited by the provisions of the agreement. He can't do anything he wants. He can't just issue an order saying, "Do that."

THE COURT: He is saying what is obvious. Don't argue with him. The foreman is bound by the union contract.

THE WITNESS: I am saying that the decisions of supervision are limited by the union contract, which is obvious.

MR. AUERBACH: Your Honor, his statement that they file a grievance --

THE COURT: I know- but why argue with him? Everybody knows the purpose of the union contract is to limit the foreman in how he can shift people around.

Isn't that true?

MR. AUERBACH: Reasonable limitations.

THE COURT: All right.

MR. MOSS: Your Honor,that is the issue in the first cause of action, supposedly, that they moved people around, and the union claims they didn't have a right to do it.

MR. TAYLOR: In formal grievances --

THE COURT: Why argue the point? It is a perfectly obvious fact the foreman is governed by the contract. That is

why you negotiated contracts.

Why argue with the witness? Please proceed.

Q You controlled the number of foremen, and, therefore, the amount that was added to or taken away from that cost, did you not?

A The man in charge of manufacturing obviously don't have more foremen than they need.

Q When you get to a certain point where you have only a handful of people working, doesn't that in and of itself produce inefficiency?

A Not in the regulation of pounds per man produced.

Q Could you operate that plant efficiently, that particular plant efficiently, with only 261 men working?

A Yes. I will close the rest of the plant, I will limit the number of machines. There are a number of small plants operating efficiently. The larger the plant you get benefit from size, but a small plant with 260 people working and producing in relation to costs can be more efficient than a plant ten times the size.

Q How much supervision help did you lay off in the spring of 1963?

A I do not know. You are asking me things that probably nobody can tell. I know when you lay people off you layoff foremen in proportion.

Q Did they actually lay them off? Do you know whether

they actually laid them off?

A That is an obvious thing that happens always.

THE COURT: The answer is you don't remember now how many foremen they laid off?

THE WITNESS: No. I didn't even know at the time. It is not my job to remember. Do you expect any chairman to know that?

THE COURT: The answer is "no." Don't explain.

One of the issues in negotiations was the ability to get foremen back into the union, so they must have made some layoffs or the issue wouldn't have come up.

MR. AUERBAC H: The question is how many.

THE COURT: And he said he doesn't know.

MR. AUERBACH: The issue is also whether it was a spurious demand.

THE COURT: The answer to that question is he doesn't know.

Q Mr. Clairmont, would a 20 per cent reduction across the board have made your plant effident?

A No.

Q Can you tell me how many times in your own experience --

A It would have reduced losses.

Q --how many times in your experience, your own

experience, as a manufacturer, whether as chairman of the board or somewhere up along the line -- and I am talking in the union contracts -- you have gotten the union's consent to a 20 per c ent decrease across the board?

A I never asked for any because there was no reason.

THE COURT: The answer is "never." Just answer the question, with no explanation.

Q It is my recollection that in your testimony this morning you said that you told the union that these cuts that you were asking them to take were only temporary. Do you recall that?

A Yes.

Q Where in your offers do you state that this was temporary?

A Do you want me to look through it?

Q Please.

A I think it is recognized by the union, too. It's always been recognized. This point has never been argued about.

Q Since --

A I think I have seen it in here. We told them the minute we reach a new agreement it is not only temporary, more than that, we will put everything back retroactive tothe date of July 13th. Not only that it's temporary, but I told

them that as soon as we reach a new agreement, that was part of our offer, we will put everything retroactive based on the new agreement to when it was changed.

It is in the papers. I can't find it. I will let the lawyers find where it is. It would be a waste of time to try to find it now.

Q I would suggest --

A Here it is; I found one of them, at least.

July 16th. In the letter when we put our new conditions into effect, at the end of this letter addressed to Mr. Hess, July 16th: "The company is further willing to make retroactive" --

Q What is the number on that?

A 43.

"The company is willing to make retroactive to July 18th any changes and adjustments that are finally agreed upon as a result of negotiations."

You will find out also in many other negotiations it was continuously stressed this was a temporary situation until we are able to get out of this loss situation.

Q You are a very practical businessman. Can you tell me anything that the union officials could take back to their union meeting hall in terms of some kind of specifics? When can we get what we are going to get in the first place; and

what are we going to get in the second place? 1453

A I don't understand your question.

Q All right. You are talking about anything that may be agreed to. You say the company is further willing to make retroactive to July 18th, 1963, any changes and adjustments that are finally agreed upon as a result of negotiations.

I ask you: what does that mean in hard facts?

A The hard facts --

Q If you don't agree to something there is no agreement, is there?

A No, but all the changes were made, in other words, over a temporary period during which there is no contract. The minute we go back to a contract -- if there is no contract there is nothing to go back to, or if there is a contract they are not going to lose anything during that period.

Q There was nowhere that you said, is there: "These reductions ~~reductions~~ will be in effect for 30, 60, 120 days, six months, eight months, nine months?" Nothing of that sort, is there?

THE COURT: Yes or no? Nothing about time limits when the reductions would be taken back?

A Yes, there were.

THE COURT: Where?

THE WITNESS: Because in the proposals made about productivity I said that this reduction will disappear as soon as there is productivity. It could have been a month -- if they had raised productivity not even normal, half, all of these reductions would have disappeared. It was in their control to make the time element play, because as soon as they would have produced more not only would the 20 per cent reduction disappear but they would have made 120 per cent more, so the time element depended on the union and whether they wanted to produce more.

Q But I take it your answer as to whether there was any specific time limits, the answer is no?

A No, ~~because~~ because that depended on them, not on us.

Q Management has nothing to do with the running of, the efficiency of a plant?

A Not when it depends on the union's decisions.

Q What would they get at the end of that period of time, whatever it might be?

A Who?

THE COURT: He has testified that under the formula - whether this is true or not is another question, but I don't see there is any unclarity about his testimony. He has testified that in his view the formula he was offering them would produce more money for them than the old formula if they would produce.

Now, that's what he said. That seems to be perfectly clear. Maybe it is a lie. That's for me to determine ultimately, but I don't see any reason for going over and over it again.

THE WITNESS: I showed them how not in general statements but showing in figures how if they increased their efficiency half way to what other people have they will more than make up. If you go through that document you will find my letter of July 3rd in which we show them with f facts and figures how that would happen.

Q I would like you to address yourself to the last paragraph of that letter of yours of July 16th, which is Exhibit 43. Would you read that for a moment, please, Mr. Clairmont?

A The last paragraph?

Q Yes.

A "We also wish" --

Q I don't mean aloud. Read it to yourself. I want to ask you a question.

(Pause.)

A Yes, I did.

Q I think you testified this morning that it was your intention that the union could make counterproposals to this agreement ~~or~~ these work rules. Was there any

limitation as to what you could do under that last paragraph?

A There was at no time any limitation to what anybody could do, but they have to go through the normal procedures of grievances. Companies make changes all the time. Now they are going to radial tires. Changes are constant. Nothing is static. Unions make all the time changes. Companies make changes in relation to what is happening in the future.

Q I am not talking about your making a change from belted to radial tires. I am addressing myself to where you say that the company, after notice and disucssion with the union, but without their -- you don't say anything there about their consent -- make such further changes in provisions regarding the terms and conditions of employment.

That doesn't have to do with changing to radial tires; that's the terms and conditions --

A If you go to a new product you change many things around.

Q Is that ~~want~~ what you had reference to?

A Anything that can happen. You make reservation that you are not bound so you are boxed in because you made these provisions forever. It is like a boilerplate thing that lawyers always put. In other words, that we are not tying ourselves up that this is the definite things under which we

are going to live because many conditions change in business life, in a plant.

In other words, we didn't want to be tied that that's it, and the union can make always changes.

Q Have you ever got a provision like that in a union contract?

A That was not a provision. That was in a letter.

Q I am asking whether you have ever obtained what you are asking in the last paragraph of your letter.

THE COURT: The answer to that is obviously no.

A It was not supposed to be put in the contract. This was just to put them on notice we may make some changes. That was not a part to be incorporated in the contract. We just told them in a letter, "Don't keep us tied up to that. We will make a contract, and if necessary in the future to change the contract we will have to go again through all the procedure of negotiations, and so forth."

Q But it is a right you reserved to yourself?

A We told them we start under this but we want to have the right to be flexible and change in the future, if it is necessary.

Q You are saying this was part of your negotiations for a new contract that you were hoping to get; is that right?

A And on that contract we gave them the eight points we want them to cooperate, and asked them to put that in the contract. We just told them, however, things change, we want to have the flexibility of moving as circumstances dictate from time to time.

Q Are you telling us that with everything that you had in the work rules of July 18th, and this letter, that you seriously expected people to continue working?

A Yes, because they always could have walked out if we would have put in anything unreasonable. Nothing would have stopped them from walking out the next day, as they did. They have always their tool. They don't have to accept it.

THE COURT: We will have to break now.

MR. AUERBACH: I would just like to point out, your Honor, that item No. 9 of the work rules contains a last sentence which in substance is similar to what he has in his letter, where he says: "Should the company from time to time find it necessary or desirable to make any other changes it shall so advise the union and discuss such changes with the union."

But it doesn't, of course, say they will do anything more than discuss it, so it is similar in purport to this.

THE WITNESS: This is an older contract. That is more or less an accepted clause a company can make changes, and if they don't agree they can have a strike. I will show in every other contract the company can make changes. Look in every other contract. It is a sort of boilerplate provision.

Q You show us that,Mr. Clairmont.

A I'll be able to show you that in two minutes.

THE COURT: It's up to you. I won't throw you out.

MR. AUERBACH: The witness will have to come back tomorrow.

THE COURT: Why don't you start tomorrow with that?

(Adjourned to February 22, 1973, at 10:00 a.m.)

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